

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

GRENADA

CLAIM NO. GDAHCV2019/0224

**IN THE MATTER OF SECTION 92 OF THE CONSTITUTION
AND
IN THE MATTER OF THE PENSIONS LEGISLATION CAP 233
AND
IN THE MATTER OF THE PENSION (PRISON OFFICERS) ACT CAP 235
AND
IN THE MATTER OF THE PENSIONS (SCHOOL TEACHERS) ACT CAP 236
AND
IN THE MATTER OF THE POLICE PENSION ACT CAP 245
AND
IN THE MATTER OF THE PENSIONS (DISQUALIFICATION) ACT CAP 230A
AND
IN THE MATTER OF THE NATIONAL INSURANCE ACT CAP 205
AND
IN THE MATTER OF THE PEOPLE'S LAW, INTERIM GOVERNMENT PROCLAMATION
AND ORDINANCES, CONFIRMATION
OF VALIDITY ACT 1 OF 1985**

BETWEEN:

**[1] GRENADA PUBLIC WORKERS' UNION
[2] GRENADA UNION OF TEACHERS
[3] GRENADA TECHNICAL AND ALLIED WORKERS' UNION**

Claimants

and

**[1] THE ATTORNEY GENERAL
[2] THE MINISTER OF FINANCE**

Defendants

Before:

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

High Court Judge

Appearances:

Mr. James Bristol, QC with him Mr. Ruggles Ferguson, Mr. Cajeton Hood and Ms. Melissa Modeste-Singh for the Claimants

Mr. Douglas Mendes, SC with him Ms. Leah Abdulah and Ms. Dia Forrester, Attorney General, for the Defendants

2021: July 15;
October 29 (Closing submissions);
2022: March 29.

JUDGMENT

- [1] **GLASGOW, J.:** This claim is concerned with the constitutionality of statutory mechanisms by which the pensions of public officers are paid by the Government of Grenada (the Government). The public officers in question are those officers appointed to the public service after 22nd February 1985. The claimants in this claim are trade unions who collectively represent most public officers within the public service. The unions contend that the current statutory mechanisms by which the Government pays pensions to public officers are inconsistent with the Constitution of Grenada (the Constitution).

Background

- [2] On 15th May 2019, the claimants filed an administrative claim for constitutional relief in which they ask for declarations and orders against the Government over what they contend is its refusal to pay pensions to public officers who joined the public service after the enactment of the National Insurance Act (NIS Act) on 4th April 1983. The public officers claim that they ought to be paid in accordance with the Pensions Acts that existed prior to the commencement date of the Constitution. In response, the Government states that only public officers who were appointed before 22nd February 1985 are entitled to those pension benefits as contained in the Pensions Acts.

Evidence of Rachel Roberts in support of the claim for constitutional relief

- [3] An affidavit in support of the claim was filed by Rachel Roberts, ("Ms. Roberts") who is the president of the first claimant, the Grenada Public Workers' Union, and who represents all of the claimants in this matter. In summary, Ms. Roberts deposes that:-

- (1) Since the 1990's the Government has refused to pay pension to public officers under the relevant respective Pensions Acts.
- (2) The Government has insisted that pensions are payable under the National Insurance Act Cap 205, which came into force on 4th April 1983.
- (3) On even date, the Government passed the Pension Disqualification Act Cap 230A ("the PDA").
- (4) By virtue of section 3 of the PDA, public officers who were appointed to a post in the service of the Government on or after 4th April 1983 were disqualified from receiving pension, gratuity and other allowances.
- (5) The PDA is replicated in section 18 (4) of the Pensions Act Cap 233, section 20 of the Pension (Prison Officers) Act Cap 235, section 18 of the Pensions (School Teachers) Act Cap 236 and section 18 of the Police Pension Act Cap 245 (together, the Pensions legislation).
- (6) None of the pension schemes contained in the Pensions legislation were modified, wound up or repealed by the Minister pursuant to section 47 of the NIS Act.
- (7) Additionally, the pension payable under the NIS Act is considerably less than that payable under each of the Pensions legislation.
- (8) The Court of Appeal in **Irvin McQueen v The Public Service Commission**¹ determined that the PDA is unconstitutional and void and that the Pensions Act, Cap 233, was the applicable law to determine the entitlement of the appellant in that case.

Claimants' submissions

What is applicable law in respect of pensions for public officers?

- [4] Counsel for the claimants, Mr. James Bristol, QC in his closing submission filed on 29th October 2021 submits that section 92 of the Constitution expressly provides for the protection of pension rights for public officers. It ties pension benefits for a judge or public officer to a "period of service" and mandates the law to be applied. Mr. Bristol QC argues that pension benefits for a period of service that commenced after the date on which section 92 came into operation are based on the law in force on the date on which that period of service commenced (section 92(2)(a)).

¹ [1998] ECSCJ No. 41

- [5] Therefore, counsel says the applicable law in respect of pension benefits for public officers entering the service after 7th February 1974, is the law in force on the date of commencement of the service. Whatever pension benefit one is entitled to is based on the law in force on the date upon entry into the service. For a later law to apply, it must make those benefits more, but not less favourable.
- [6] Further, counsel submits that section 92 of the Constitution is an entrenched provision which requires a special parliamentary majority and a referendum in order to change or amend it (section 39(5)). Counsel notes that, to date, there has been no amendment to section 92 in keeping with section 39(5) of the Constitution. Pension benefits for public officers are preserved under section 92 and as such no ordinary law can take away the right to a pension. Parliament may properly pass a law which varies the extent of the pension benefit but not remove it entirely.
- [7] Counsel submits that section 93 of the Constitution restricts the power to withhold, reduce in amount and suspend pension benefits. The section seeks to ensure that the Government does not arbitrarily interfere with pension benefits. The Pensions legislation contain provisions which authorise the withholding, reducing, or suspending of pension benefits in specific circumstances consistent with sections 92 and 93 of the Constitution.

Pensions (Disqualification) Act

- [8] With respect to the (Pensions) Disqualification Act, counsel submits:-
- (1) That the said Act seeks to change the applicability of pension benefits under section 92 of the Constitution.
 - (2) It discriminated against public officers on the basis of their point of entry into the service, in that it removes public officers, teachers and others from the pension scheme under the law in force within the meaning of section 92 of the Constitution.
 - (3) It purports to insert a new timeline in section 92 which disentitles public officers whose period of service commenced after 4th April, 1983 from receiving pension benefits.
 - (4) The Constitution creates one timeline covering three periods, that is, a period of service that begins and is completed before 7th February 1974; a period of service that begins

prior to 7th February 1974 and completes after that date; and a period of service that begins after 7th February 1974.

- (5) However, the PDA purports to set out a second timeline after which the law applicable to pensions benefits cannot be relied upon. In essence, it says that after 4th April 1983 one cannot rely on the law then “in force”, being the various Pensions legislation.
- (6) The PDA did not repeal the Pensions legislation, but merely removed certain public officers from the scope of their operations. Considering that those Pensions legislations remain in force, then those are the laws to be applied under section 92(2)(b) of the Constitution and the removal of public officers from that ambit contravenes section 92(2)(b) since it is denying public officers the benefits of the pensions under the Pensions legislation.
- (7) In any event, even if the PDA was effective to remove public officers from the Pensions legislation, it is submitted that given that there is no other pension regime in force the effect is to deny pension which is entrenched in the Constitution.
- (8) Therefore, the provisions of the PDA are clearly in breach of section 92 of the Constitution.

[9] Counsel also takes issue with the application of section 18(4) of the 2018 Pensions (Amendment) Act. Counsel submits that based on the decision in **Mc Queen**, the applicable law up until 2018 was the law contained in the Pensions legislation. The 2018 Act purports to modify section 92(2) of the Constitution by displacing it with regard to persons joining the service after 22nd February, 1985. However, counsel is of the view that such a modification amounts to an alteration of the Constitution within the meaning of section 39(9)(d) of the Constitution and would require compliance with the provisions of section 39(5) of the Constitution.

[10] Additionally, counsel submits:

- (1) The 2018 amendment, in particular section 18(4) cannot have retrospective effect.
- (2) Between February 1985 and the date when the 2018 Amendment came into force, public officers entering the service would have been entitled to pensions pursuant to the

Pensions legislation. The subsequent amendment seeks to make such entitlement less favourable contrary to section 92(2)(b) of the Constitution.

- (3) Any retrospective application of the 2018 amendment will give rise to live issues of deprivation of property rights.
- (4) Moreover, Parliament does not act in vain (**AG Reference No. 1 of 1975**²). If the NIS Act introduced a new pension regime, why then was it necessary to pass the PDA and later the Pension (Amendment) Act?

Is the Mc Queen case distinguishable? Claimant's position

- [11] The parties spent some time arguing about the impact of our Court of Appeal's decision in **McQueen** and whether this court is bound by the ruling in that case.
- [12] The claimants argue that section 84(8) of the Constitution addresses pension rights in the context of early retirement, for reorganisation and otherwise. It speaks to "every officer" and was addressed by Byron CJ in **Mc Queen**. Further, the claimants state that every pensionable public officer, regardless of his or her time of entry into the public service, is entitled to a non-contributory pension as guaranteed by section 92 of the Constitution. The claimants posit that the defendants' argument that the pronouncements in **Mc Queen** are only restricted to issues related to section 84(8) of the Constitution produces an absurd result. The claimants argue that if the defendants' interpretation of **McQueen** is correct then it means that officers joining the public service after the appointed day receive a pension under the NIS Act if they go to full retirement, but if they lose their jobs under section 84(8) they get full pension under the Pensions legislation. The claimants maintain that there can only be pension applicable to all public officers who attain retirement age. It is either under the Pensions legislation or under the NIS Act.

Is the NIS pension scheme separate and distinct from the pensions scheme under section 92 and 93 of the Constitution?

- [13] Counsel for the claimants submits that the pension scheme contemplated by the NIS Act is distinct from the pension schemes under sections 92 and 93 of the Constitution. The pension

² [1975] 2 All ER 684

provision under section 46 of the NIS Act is not consistent with the pension scheme for public officers under section 92 of the Constitution. Section 47 of the NIS Act classifies the scheme as a private scheme for the purpose of the NIS Act.

- [14] The claimants explain that Byron CJ in **Mc Queen**, made it clear that the legislative intention of the People's Revolutionary Government (PRG) was never completed, since the Minister made no order under section 47 of the NIS Act, winding up the existing scheme for public officers and replacing it with a new scheme. This means that the Pensions legislation are intact, as the law in force up to 2018 with respect to pension benefits for public officers.
- [15] Additionally, the claimants argue that the pension under section 46 of the NIS Act reflects a contributory scheme which requires contributions from both Government and public officers. However, the section 92 pensions is a grant to pensionable public officers. The claimants' view is that the pension benefits under section 46 of the NIS Act have nothing to do with period of service and are based on the extent of contributions. The NIS Act does not expressly or impliedly repeal or amend the Pensions legislation. There is no inconsistency between the NIS Act and the Pensions legislation in so far as public officers are concerned.
- [16] Further, the claimants posit that section 62 of the NIS Act makes clear that nothing prevents an employer from operating a private scheme which provides benefits for persons employed by him. It is therefore not inconsistent for the pension under section 46 of the NIS Act and the non-contributory pension under section 92 of the Constitution to run side by side.

Claimants' supplemental submissions

Applicable pensions laws

- [17] The claimants state further that the various Pensions legislation under consideration, in their state at the relevant time, were the applicable laws governing pensions when the Constitution came into force on 7th February, 1974 and the applicable laws under section 92(2)(a) of the Constitution. The pensions legislation remained in force as the applicable law under section 92(2)(b) of the Constitution, at least up and until 27th July 2018, when they were amended by Act No. 5 of 2018.

- [18] The claimants contend that Byron CJ's conclusion was certainly influenced by the preamble to the PDA which refers to the NIS Act and the intention to create a new pension regime thereunder. Based on Byron CJ's pronouncement that the PDA was of no effect, the pensions legislation continued to be the law in force as at 7th February 1974 when the Constitution came into operation.

Were the Pensions legislation amended by the 2018 amendments?

- [19] The claimants contends that, in so far as the 2018 amendments purport to create a limitation to pensions for public officers whose service commenced after 22nd February 1985, it is unconstitutional for the following reasons:

- (1) It contravenes section 92 of the Constitution, in that it removes the pension entitlement altogether for persons who joined the public service after 22nd February, 1985 and therefore the pension benefits are obviously less favourable than those under the Pensions legislation and cannot apply.
- (2) A fair construction of Section 92 of the Constitution envisages that public officers will always enjoy pension benefits. The marginal notes reveal the clear intention of the framers of the Constitution that section 92 is to protect pension rights, which is why the provision is deeply entrenched in the Constitution.
- (3) Equally, section 92 envisages the existence of benefits. Otherwise the proviso "or any law in force at a later date that is not less favourable" is meaningless as no later law can provide less favourable benefits than no benefits at all.
- (4) It contravenes section 6(1) of the Constitution, in that it amounts to a deprivation of property without prompt payments of full compensation within the meaning of property in the decision of the Court of Appeal in **Attorney General of St Christopher and Nevis v Lawrence**³.

³ (1983) 31 WIR 176 at pages 184-185

NIS pension (age) benefit

- [20] The claimants contend that while some public officers subscribe to the regime under Part VI of the NIS Act by making contributions thereto, this is a general scheme and not a scheme specific to public officers. The payments of pension under section 92 of the Constitution must be in full and the receipt of NIS age benefits cannot justify a reduction of pension by the amount of such age benefit. The right to an age benefit under the NIS Act is a right vis-à-vis the National Insurance Board and not the Government.
- [21] In closing, the claimants state that the Pensions legislation in force on the 7th February 1974, have been and still are, the applicable laws with respect to pensions benefits under section 92(2) of the Constitution. The entitlement to pension as envisaged by section 92 of the Constitution is independent and separate from any claim or entitlement to the pension age benefit under the NIS Act.

Defendants' submissions

Applicable pension Law

- [22] The defendants contend that with respect to section 92 of the Constitution, there is no dispute as to the law which applies to the first two categories, that is pensions already granted before the Constitution came into force and to pensions to be granted to public officers whose services commenced before the Constitution came into force. However, the dispute in this case is in relation to the third category, that is, public officers appointed after the Constitution came into force. In essence, the dispute they say concerns the identification of the law which is to be applied with respect to pension benefits for persons whose period of service commenced after 22nd February 1985.
- [23] The defendants further contend that:-
- (1) Section 92(2)(b) does not prohibit anything or require any particular thing to be done. What it does is to provide a formula for determining the applicable law with respect to pension benefits of public officers appointed after the Constitution took effect. It prescribes that the law relating to the pensions benefits of those persons is the law in force on the date the period of service of the particular officer commenced.

- (2) Once it is determined what law governs the pension benefits of a particular public officer appointed after the Constitution came into force, section 92 of the Constitution creates an implicit prohibition against the passage of any law which alters the officer's pension benefits. That is, the public officer becomes constitutionally entitled to the pension as described in the law in force on the date he or she was appointed. However, there is no complaint in this case that the pension to which public officers appointed after the Constitution came into force are entitled, has been altered to their detriment.
- (3) The law which applies to the pension benefits does not include the various Pensions legislation. This is so for the reason that each of the Pensions legislation contain a provision which provides that "no pension, gratuity or other allowance under this Act shall be granted to any (person) first appointed (to the service) on or after the 22nd February 1985. On the other hand, the NIS Act provides an "age pension" which is expressly made to apply to "persons employed by the Government and any public body in like manner..." Therefore, the NIS Act is the law which applies to pension benefits for persons appointed after 22nd February 1985, in accordance with section 92(2)(b) of the Constitution.

Minister's power to modify, wind-up or repeal the previous pension schemes under section 47 of NIS Act

- [24] The defendants contend that there is nothing under section 47 of the NIS Act which, in any way, derogates from the immediately preceding declaration in section 46 that the NIS Act applies to persons employed in the public service. The existence of an inchoate power in the Minister to make changes to or to wind-up a scheme which is separate and apart from the pension provided for under the NIS Act cannot be said even remotely to have been intended to nullify the effect of section 46. In other words, the Minister's failure to exercise the power given to him to transform a scheme not provided for under the NIS Act could not possibly have the effect of invalidating the NIS Act with respect to public officers.

Section 93 arguments

- [25] Additionally, the defendants state that lead counsel for the claimants did not advance their written case that the disqualification provisions are inconsistent with section 92(2) of the Constitution. Section 92(2) merely identifies the law that determines the pension benefits of a person appointed to the public service after the Constitution commenced. Moreover, lead counsel for the claimants contended that the disqualification provisions are inconsistent with section 93 of the Constitution. The defendants submit that this contention is misconceived.
- [26] Section 93 of the Constitution is premised on the existence of a law applicable to a public officer under which a person or authority has a discretion to decide whether or not to grant a pension benefit or to withhold, reduce or suspend a pension benefit that has been granted. Therefore, where such a law exists any act of withholding, reduction or suspension can only lawfully occur with the concurrence of the Public Service Commission. This concurrence from the Public Service Commission is applicable to a person appointed prior to and after 22nd February 1985. The section does not purport to identify the method for determining the law which applies to pension benefits.
- [27] Section 93 does not limit the capacity of the legislature to enact a law which invalidates an existing pension law, in so far as it may apply to persons appointed thereafter, and to enact another pension law which applies to those persons. However, what the section does, is to regulate any discretion provided for under the pension law applicable to public officers, to withhold, reduce, or suspend their pensions.

Was a contributory pension plan envisaged by section 92 of the Constitution?

- [28] With respect to claimants' argument that the contributory pension plan under the NIS Act was not envisaged by section 92(2)(b) of the Constitution, the defendants' response is that there is nothing in section 92(2) which creates an entitlement to a non-contributory pension plan and there are no words to that effect in the section. If that was the intention of the section, that could have been easily conveyed. The defendants' further response is that all section 92(2) does is to identify the law to be applied as was pronounced by the Court of Appeal in **Mc Queen**. With respect to public officers whose period of service commenced after section 92 came into

operation, the applicable law is “the law in force on the date on which that period of service commenced”.

[29] The defendants argue that the use of the phrase “period of service” in section 92 was to facilitate the identification of the applicable law with respect to pension benefits by reference to the point in time when the public officer has commenced his or her service in the public service, that is, either before or after section 92 came into force. In essence, section 92 identifies what pension benefits a public officer will receive. The features of those pension benefits will ultimately be determined by the law in force on the date the period of service commenced.

[30] In the premises, the defendants submit that the claimants’ challenge to the constitutionality of the disqualification provisions in the Pensions legislation fails. It is the NIS Act that is the applicable pension law and not the Pensions legislation.

Issue

[31] The main dispute between the parties is whether the pension scheme established by the NIS Act is the applicable pension scheme for public officers who were appointed in the public service after the Constitution came into force and whose period of service commenced after the restoration of the NIS Act on 22nd February, 1985.

[32] In determining the above dispute, the court is tasked with considering whether the NIS Act together with the PDA and the Amendments to Pensions Acts (2018) effectively replaced the pension scheme for public officers enacted in the Pensions legislation.

Some preliminary observations

[33] The Constitution of Grenada, which by its section 106 is declared to be the supreme law of Grenada, is not silent on the question of pensions for public officers. In particular the Constitution is not silent on pensions to be paid to public officers who joined the public service after the commencement of the Constitution. The parties are all agreed that that Constitution came into force on the 7th February 1974. Section 92(2)(b) of the Constitution speaks to pension for public

officers appointed after the Constitution came into force on 7th February 1974. The section prescribes:

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall-

a.

b. in so far as those benefits are wholly or partly in respect of a period of service as a judge or public officer that commenced after this section comes into operation, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person. (Underlining supplied)

[34] This section, in my opinion, is not obscure or ambiguous. Its intention is to secure the pension of those who commenced their service after the Constitution came into force on 7th February 1974. In this regard, the pension of a public officer who joined the public service after 7th February 1974 is to be determined by any law that is in force not on 7th February 1974 but on the day that the public officer commenced his or service on behalf of the Government of Grenada.

[35] Accordingly, I disagree with the claimants to the extent that they contend that the PDA creates a timeline that is different to the one envisioned by section 92(2)(b). I will discuss the effect of the PDA below but it seems to me that in arriving at the proposition that the PDA creates a different timeline, the claimants have missed the question proposed by section 92(2)(b) and it is this, what is the law in force on the day that the public officer commences his or her service? That law must be assessed to see whether it secures the pension of the public officer in question. Additionally, section 92(2)(b) permits the Government to pass a law providing for pension at a date which is later than the date on which a public officer commences his or her public service. That later law, however, cannot provide for pension on less favourable terms than the terms of the law that was in force on the day that the public officer commenced working in the public service.

[36] At the time that the Constitution came into force on 7th February 1974, there existed various pieces of legislation which established pensions for public officers within the public service. These include:

- (1) The Pensions Ordinance, Cap 214;
- (2) Pension (Prison Officers) Act, Cap 215;
- (3) Pensions (School Teachers) Act, Cap 216;
- (4) Police Pensions Act, Cap 223;

- (5) Pensions Act, Cap 233;
- (6) Pension (Prison Officers) Act, Cap 235;
- (7) Pensions (School Teachers) Act, Cap 236;
- (8) Police Pension Act, Cap 245.

[37] After the Constitution took effect in 1974, the following pieces of legislation were enacted into law which also affected pensions of public officers:

- (1) National Insurance Act⁴;
- (2) Pensions (Disqualification) Act⁵, Cap 230A (The People's Law No. 24 of 1983) (the PDA);
- (3) Amendments to Pensions Acts⁶.

[38] The arguments, which I have recited in full above in this judgment, are centred on whether the NIS Act together with the PDA and the Amendment to Pensions Acts (2018) effectively replaced the provisions previously in place under the Pensions legislation and in particular, the Pensions Act, Cap 233 in respect of the pensions of those who joined the public service after 1985.

The National Insurance Act (NIS Act)

[39] The National Insurance Act (NIS Act) took effect on 4th April 1983 and established a contributory fund or scheme for the payment of sickness, invalidity, maternity, age, funeral and other benefits to beneficiaries for the purposes of the Act. The Act also prescribes that it shall apply to persons employed by the Government and any public body in like manner as if the body were a private person (Section 46). Under the People's Laws, Interim Government Proclamations and Ordinances Confirmation of Validity Act (Act No. 1 of 1985), the laws made under the PRG during the period between March, 1979 and November, 1984, when the Constitution was suspended, were confirmed as valid and given full force and legal effect.

[40] The long title of the NIS Act states:

“An Act to establish a national insurance scheme through the collection of contributions and other income, and for the payment of sickness, invalidity, maternity, survivors', age

⁴ Cap. 205 of the 2010 Continuous Revised Edition of the Laws of Grenada.

⁵ Cap. 230A of the 2010 Continuous Revised Edition of the Laws of Grenada.

⁶ Act No. 5 of 2018.

and funeral and other benefits; to establish a National Insurance Fund; to take over and manage in accordance with the provisions of this Act the Provident Fund established under the Provident Fund (Agricultural Workers) Act, 1969; to enable reciprocal arrangements to be made with foreign governments with regard to the aforementioned benefits, and for connected purposes.”

[41] With respect to pensions for public officers, sections 46 and 47(1) of the NIS Act provide:

“46. Regulations for treating public officers, etc., as insured persons

This Act shall apply to persons employed by the Government and any public body in like manner as if the Government or such body were a private person, with such modifications as may be made therein by regulations for the purpose of adapting the provisions of this Act to the case of such persons.

47. Modification or repeal of public service pension scheme

(1) The Minister shall in relation to a public service pension scheme (hereafter in this Part called “the scheme”) have power to make provision for the modification or winding up of the scheme or the repeal of any enactment relating to the scheme.”

The Pensions (Disqualification) Act

[42] On 16th September 1983, the then People’s Revolutionary Government (PRG), enacted the PDA. That Act stated that any person who is appointed to a post in the service of the Government on or after the appointed day of 4th April 1983 shall not be entitled to any pension, gratuity or other allowances under the Pensions Ordinance Cap.233, Pensions (Prison Officers) Ordinance, Pensions (School Teachers) Ordinance and the Police Pensions Ordinance.

[43] The long title of the Pensions (Disqualification) Act prescribes:

“An Act to disqualify persons who are appointed to the service of the Government of Grenada on or after the appointed day from pensions, gratuities or other benefits under the Scheduled enactments.”

And Sections 2 and 3 of the Pensions (Disqualification) Act prescribe:

“2. Interpretation

In this Act—

“appointed day” means the 4th April, 1983;

“Scheduled enactments” means the enactments set out in the Schedule to this Act.”

“3. Disqualification

Any person who is appointed to a post in the service of the Government of Grenada on or after the appointed day shall not be entitled to any pension gratuity or other allowance under any of the Scheduled enactments.”

Amendments to Pensions legislations

- [44] On 26th July 2018, various amendments were made to the Pensions legislation by Act No.5 of 2018. These statutes were amended by deleting the words “before” or “on or after” 4th April, 1983 as the case may be and as prescribed in the Pensions Acts and substituting the words to either “before” or “on or after” the 22nd February, 1985.

Analysis and discussion

- [45] I observe that neither the PDA nor the amendments to the Pensions legislation make provisions for a pension scheme for public officers or to pay pension benefits to them. The provisions of those Acts merely disqualify public officers whose period of service commenced after 4th April, 1983 and later 22nd February, 1985 from receiving pension benefits under the Pensions legislation. To that extent the PDA and the amendments to the Pensions legislation do not comport with the provisions of section 92(2)(b) of the Constitution because section 92(2)(b) requires a law that provides for the pension benefits to be paid to the public officer at the date of the commencement of their service. The PDA and the amendments merely set a date by which the public officer is disentitled to receive a pension under the Pensions legislation.
- [46] But there is no void in the laws of Grenada when it comes to the issue of retirement benefits for public officers employed after the commencement of the Constitution. This is since in addition to removing the entitlement to receive a pension under the Pensions legislation, parliament concomitantly enacted section 46 of the NIS Act which, as it says, provides for age or other benefits to be paid to public officers under the NIS Act as if they were private sector employees.
- [47] I must reference the argument made by the claimants that the terms of the NIS Act are not consistent with what is normally termed a pension as they see it. They say for instance that the Pensions legislation provides for payment solely by Government based on years of service as opposed to the NIS Act which is a contributory scheme. The question in this case is to be resolved by whether the statute(s) in question pass constitutional muster. In particular whether they meet the letter and spirit of section 92(2)(b) of the Constitution. In that regard, I do not believe the intendment of section 92(2)(b) is to govern the quantum or adequacy or sufficiency of retirement benefits to be paid to public officers. As was said in **McQueen**, section 92(2)(b) is designed to identify “the method of determining the law to be applied with respect to pension benefits.”

Clearly, as I have stated above, once the law is in place, the Government cannot enact any other law that grants benefits that are less favourable to the public worker than the law which was enacted and was extant at the date that they commenced their service.

- [48] In my view therefore, it is the conjoint effect of the PDA and the NIS Acts which suggest or indicate a mechanism by which public officers who were employed after a certain date may be paid retirement benefits. Without more, this is what section 92(2)(b) of the Constitution contemplates. As I have said before, that section permits Parliament to enact laws dealing with pension benefits for workers whose service commenced after 7th February 1974. Those persons would be governed by any law which is in force on the day that their service commenced. In that regard it seems pellucid to me that the persons employed in the public service after the PDA and NIS Act were passed would have to seek their pensions by the terms of those statutes.

The impact of McQueen

- [49] But this is not the end of matters. The provisions of both the PDA and NIS have been subjected to judicial scrutiny, deliberation and determination in our courts. In **McQueen**, this is what Byron CJ had to say about those 2 statutes. He first found at paragraph 24 of the judgment that with respect to the NIS Act –

“We were not pointed to the exercise of any powers under section 47 of the Act, and my own researches have not revealed any. The conclusion is the public service scheme contained in the Pensions Act Cap 233 was not modified, wound up or repealed under the powers of the National Insurance Act.”

- [50] On this case, this court has similarly been confronted by the lack of any evidence of the exercise of the Ministers’ powers. The defendants say that the exercise of the power set out at section 47 is not a sine qua non of the regime contemplated by the NIS Act and in particular what is set out at section 46 of the NIS Act. In their view, the exercise of the power at section 47 is not mandatory. I do not agree. In fact I am constrained to point out that that this court is bound by rulings of the Court of Appeal in **McQueen** in so far as they apply to the issues in this case. However, if I am permitted to do so I would add this thought. To hold that the Minister is not obliged to follow the dictates of section 47 would suggest that the enactment was passed in superfluity. If Parliament intended that the issue of public officers’ pension should be solely governed by section 46 of the NIS Act then there would be no point in enacting section 47. Section 46 would be the *ultima verba* on the issue. Section 46 would have sufficed to end the

regime under the Pensions legislation and replace it with the regime under the NIS Act. This is what the defendants wish for me to extrapolate from the legislative scheme.

[51] But I regard the legislative scheme set out in sections 46 and 47 of the NIS Act in another way. My view is that Parliament intended sections 46 and 47 to operate in tandem. By section 46 it is declared that the terms of the NIS Act would apply to public officers in the same manner that it applies to private sector employees. However, in the event that there was already a scheme in place with respect to pension to be paid to public officers, section 47 then enjoins the Minister to make provisions for the modification, winding up of the scheme or the repeal of any enactment relating to the scheme.

[52] I do acknowledge however, as did the court in **McQueen** that the PDA sought to disentitle public officers to receive pensions after the appointed date. Byron CJ noted that the PDA “*evinced the legislative intention to create new terms of employment for public servants employed after its appointed day by removing them from the Pension Scheme under Cap 233.*” This activity could only comport with constitutionality if it confirms with the letter and intendment of the Constitution on the question of pensions to be paid to public officers. **McQueen** opined that it did not. The Court found that “*the legislative intention was not fully executed because no orders have been made to create a new pensions regime for public officers under the National Insurance Scheme or otherwise.*”

[53] The defendants ask me to find that **McQueen** ought to be confined to its facts to the extent that the question in that case centred on retirement benefits to be paid to public officers who were compulsorily retired due to the abolition of their office. The court in **McQueen** found that those officers retained a right to such benefits pursuant to section 84(8) of the Constitution. Equally, it found that the PDA took away the right to receive a retirement benefit from those whose offices were abolished and the NIS Act did not contemplate a replacement regime. In that regard, the PDA was inconsistent with the constitution and in particular section 84(4) thereof. The consequence was that those officers who were compulsorily retired after their offices were abolished would continue to receive a pension under the Pensions legislation.

[54] The excellence of the argument notwithstanding, I have formed the view that the pronouncements in **McQueen** are not confined as suggested by the defendants. For one thing, a careful reading of the ruling does not lend to the assessment made by the defendants. The

Court, for instance was very definitive in its finding that *‘the legislative intention was not fully executed because no orders have been made to create a new pensions regime for public officers under the National Insurance Scheme or otherwise.’* It was after this finding that the Court of Appeal went on to find that “in particular’ the absence of the requisite orders was apparent with respect to benefits conferred by section 84 (4).

- [55] Additionally, I am in agreement with the claimants that to hold that the findings in **McQueen** with respect to the PDA and the NIS Act are confined to the facts of that case would lead to an anomaly or disparity in granting retirement benefits to public officers. The seeming duality is this; the defendants’ approach would mean that where a public officer is compulsorily retired due to the abolition of his office, his pension would be paid under the Pensions legislation, but where he has reached full pensionable age and retired his pension would be paid under the NIS Act. It is nowhere apparent that the Parliament intended for the PDA and the NIS Act to operate with such disparities or inefficiencies. In fact it seems to me that the intention was to remove all public officers from the Pensions legislation scheme and place them under the NIS scheme. I am constrained to follow **McQueen** to hold that the legislative intention was not fully executed.

Conclusion

- [56] The result of the foregoing discourse is this; section 92(2)(b) is a Constitutional provision and in accordance with section 106 of the constitution, section 92(2)(b) must be considered the supreme law regarding *“the method of determining the law to be applied with respect to pension benefits”* for public workers. In this regard, section 92(2)(b) sets the standard for the law to be applied with respect to persons entitled to retirement benefits after the commencement of the constitution. To the extent that **McQueen** found that *‘the legislative intention was not fully executed because no orders have been made to create a new pensions regime for public officers under the National Insurance Scheme or otherwise’*, it must be found and I so find that the PDA was clearly inadequate in its efforts to remove the rights of the public workers to receive a pension under the Pensions legislation. The PDA is therefore void to the extent that it is inconsistent with the rights set out at section 92(2)(b) of the Constitution. This means that the pre PDA regime to ascertain the rights of public officers to receive a pension remains and it is that which is contained in the Pensions legislation.

[57] The conclusion of this matter is that the originating motion filed by the claimants is granted. It is hereby ordered that:

- (1) The National Insurance Act, Cap. 205 did not modify, wind-up or repeal the pension schemes for public officers contained under the Pensions legislations.
- (2) The law to be applied to determine pension benefits for public officers appointed to the public service of the Government before, on or after the 4th day of April 1983 under section 92(2)(b) of the Constitution is the Pensions Act, Cap. 233, the Pension (Prison Officers) Act Cap. 235, the Pensions (School Teachers) Act Cap. 236 and the Police Pension Act Cap. 245.
- (3) The Pensions (Disqualification) Act Cap. 230A is unconstitutional, null and void.
- (4) The Amendments to Pensions Acts (Act No. 5 of 2018) is unconstitutional, null and void.
- (5) The amendments to section 18 (4) of the Pensions Act Cap. 233; section 20 of the Pensions (Prison Officers) Act Cap 235; section 18 of the Pensions (School Teachers) Act Cap. 236; section 18 of the Police Pensions Act Cap. 245 are all unconstitutional, null and void.
- (6) The claimants are awarded costs in the sum of \$4,000.00

I thank counsel for their assistance and their patience in awaiting the ruling in this claim.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar