

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

GRENADA

CLAIM NO. GDAHCV2020/0399

IN THE MATTER OF SECTIONS 84 AND 101 OF THE CONSTITUTION

AND

IN THE MATTER OF THE ROAD TRAFFIC ACT CAP 289A

AND

IN THE MATTER OF THE ROAD TRAFFIC (AMENDMENT) ACT 21 OF 2017

AND

IN THE MATTER OF THE ROAD TRAFFIC (AMENDMENT) ACT 16 OF 2018

BETWEEN:

CLAUDETTE JOSEPH

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. James Bristol QC, with him Ms. Melissa Modeste-Singh for the Claimant
Ms. Dia Forrester, Attorney General with her Ms. Caryn Adams, Crown Counsel
for the Defendant

2021: February 10;
: June 24.

JUDGMENT

Introduction

- [1] **ACTIE, J.:** On 29th September 2020, the claimant, Ms. Claudette Joseph, a practicing attorney-at-law was issued a fixed penalty notice by a traffic warden in the Town of St. George's Grenada. The fixed penalty notice alleged that Ms. Joseph "...did use [a] mobile device while driving [a] motor vehicle contrary to section 77B (1) of the Road Traffic Act". Being dissatisfied with the fixed penalty notice issued on her, Ms. Joseph challenges the lawfulness of the appointment of traffic wardens and the fixed penalty notice issued on her. In essence, Ms. Joseph claims that the fixed penalty notice issued on her is unlawful given that the post of traffic warden is not public office as provided by section 111 of the Constitution nor is a traffic warden lawfully employed by the Grenada Transport Board.

Originating motion

- [2] Ms. Joseph filed an originating motion on 14th October 2020 which was amended on 21st December 2020, seeking the following reliefs:
- (1) A declaration that a traffic warden, in carrying out his/her duties, is performing the functions of a police officer under section 23(1)(e) of the Police Act, namely "controlling traffic upon public roads and removing obstructions therefrom".
 - (2) A declaration that the position of a traffic warden is a public officer within the meaning of section 111 of the Constitution.

- (3) A declaration that the appointment of a traffic warden by the Grenada Transport Board is null and void, in that the said Board is not a legal entity and does not have the capacity to contract.
- (4) A declaration that the appointment of a traffic warden by the Grenada Transport Board is ultra vires section 84 of the Constitution, null and void.
- (5) Alternatively, a declaration that the appointment of a traffic warden by the Grenada Transport Board is ultra vires section 89 of the Constitution, null and void.
- (6) A declaration that a fixed penalty notice issued by the traffic warden is null and void and of no effect.

Claimant's evidence

[3] Ms. Joseph's affidavit in support of her originating motion in relation to legislative regime governing road traffic in Grenada, says:

- (1) The Grenada Transport Board (the Board) was established by section 3 of the Road Traffic Act¹. The Board is not a statutory corporation nor legal entity. Its function is to advise the Minister on all matters relating to road transport and traffic.
- (2) On 29th September 2017, the Road Traffic Act was amended by the Road Traffic (Amendment) Act² which introduced section 30A to the Road Traffic Act. Further, on 14th December 2018, the Road Traffic Act was again amended and introduced new provisions. Section 3 of the 2018 Road Traffic Amendment Act (2018 Act) introduced sections

¹ Cap. 289A of the 2010 Continuous Revised Edition of the Laws of Grenada.

² Act 21 of 2017.

4A and 4B. Section 4A empowers the Board, with approval of the Minister, to employ staff as necessary to perform its functions. Section 4B provides that the funds of the Board shall consist of monies appropriated by Parliament.

- (3) Section 4 of the 2018 Act empowers the Board, with the approval of the Minister and recommendation of the Commissioner of Police, to appoint traffic wardens for the purposes of controlling and regulating traffic in accordance with the Road Traffic Act. Section 4 of the 2018 Act introduced section 3B(3) which specifies the uniforms that the traffic warden is to wear. Section 3B(4) as introduced by section 4 of the 2018 Act provides that the Board shall pay the traffic wardens a salary at a rate to be determined by the Minister.
- (4) Sections 5 to 14 of the 2018 Act gave traffic wardens similar powers to that of police officers, in particular the issuing of fixed penalty notices.
- (5) A traffic warden is not a recognised rank of the Royal Grenada Police Force as set out in section 4 of the Police Act³.
- (6) On 29th September 2020, a traffic warden issued and served a fixed penalty notice on Ms. Joseph.
- (7) In light of the above, Ms. Joseph is of the view that the traffic warden acted without lawful authority in issuing the fixed penalty notice, since he was not lawfully appointed by the Public Service Commission nor lawfully employed by the Board. Ms. Joseph therefore asks the court to grant the reliefs prayed for.

³ Cap 244 of the 2010 Continuous Revised Edition of the Laws of Grenada.

Defendant's evidence

- [4] In response to the originating motion, the defendant filed the affidavits of Ms. Anna Brizan and Superintendent of Police Randy Connaught on 20th January 2021.
- [5] Ms. Anna Brizan, Permanent Secretary in the Ministry of Transportation, in her affidavit contends that:
- (1) The Road Traffic Act as amended (the said Act) is critical to traffic management and ensuring the safety of members of the public who use roads and motor vehicles within the State of Grenada.
 - (2) The Board was established by the said Act as a department and or agent of the Government of Grenada under the Ministry with responsibility for transportation. The Board was empowered to act in an advisory capacity to the Minister of Communication and Works on all matters pertaining to road transport and traffic.
 - (3) There have been several amendments to the said Act, particularly the Road Traffic (Amendment) Act of 2017 (2017 Act) which introduced section 77B (1) concerning the use of handheld mobile devices while driving or having charge of a motor vehicle.
 - (4) On 29th September 2020, Ms. Joseph was charged for having contravened section 77B (1) of the said Act.
 - (5) By way of an amendment to the Road Traffic Act in 2018, provision was made for the Board to employ traffic wardens. Between period 21st November 2018 and 23rd November 2018, the 2018 Amendment Act was debated in the House of Representatives and passed.

- (6) Between 4th December and 6th December 2018, the 2018 Act was presented to the Senate for debate and passed. The 2018 Amendment Act came into force on 14th December 2018 and gave the Board the power to employ traffic wardens using monies appropriated by Parliament.
- (7) Traffic wardens are critical for regulating traffic in several areas in Grenada, including the city of St. George's during peak periods. The presence of the traffic wardens also acts as a deterrent to non-compliance with traffic laws and aids in the enforcement of traffic laws as prescribed in the said Act. The said Act does not permit the traffic wardens to arrest or detain persons, investigative accidents, or sign charge sheets and crime dockets in relation to traffic offences. However, the traffic wardens are empowered to direct the flow of traffic, detain vehicles, examine driver's licences and issue fixed penalty tickets for traffic violations.
- (8) The Board was a department or agent of central Government and acted in that capacity when it employed traffic wardens. The fact that the contracts all state that the Board is the employer of traffic wardens is purely a statutorily created administrative mechanism as all of the employer's obligations are the obligations of the Government. There is no established post in the public service for traffic wardens neither is any provision made for the position of traffic warden in the annual budget and expenditure.
- (9) In the year 2020, the Government undertook consultations to give the Board greater responsibilities and legal status. The consultations began in or about July 2020 and ended in October 2020. The Road Traffic (Amendment) Act 2020 (the 2020 Act) was passed on 4th

December 2020. The Board was replaced by the Grenada Transport Commission which is a body corporate.

(10) The Commission provides [advice] to the Minister on all matters pertaining to road transport and traffic. The Commission, as a body corporate, is not a part of central government and is not a servant or agent of the State. It does not enjoy the Crown's immunities and privileges and its employees are not public officers. Therefore, traffic wardens are not holders of public office and are not employed in the service of the Government.

(11) A traffic warden's role is to complement that of the Police though traffic wardens are not employed as police officers. The traffic wardens are trained in road safety, traffic management and in the application of traffic laws. They are not trained as police officers as they perform a specific, peculiar role different to that of police officers.

[6] Superintendent of Police (SP) Randy Connaught in his filed affidavit in opposition says that he is in charge of the Traffic and Transport Division of the RGPF. He deposed that there has been a significant increase in vehicular traffic on the roads in Grenada. The Board now the Grenada Transport Commission on occasion employs traffic wardens to assist the RGPF with managing the traffic in the Town of Saint George and Grand Anse during the day.

[7] SP Connaught further states that traffic wardens and police officers do not perform the same duties, even though they assist with traffic related issues. The duties of traffic wardens he says are limited to the provisions of the Road Traffic Act, that is, to regulate and manage traffic. SP Connaught avers that the traffic warden's duties do not include crime detection and investigation techniques and their uniforms are not similar to police officers.

- [8] In relation to the training of traffic wardens, SP Connaught avers that the training for traffic wardens is substantially different to that of police officers. Traffic wardens are trained for 4 weeks, specifically concerning the regulation of traffic, including managing traffic, road safety, traffic offences, and littering laws, among other things. Conversely, police officers undergo a lengthy 24-week training programme in policy theory and practical training. The training includes matters concerning administration and general policing, judicial systems and laws, tactical skills, among other things.

Issues

- [9] The main contention of Ms. Joseph concerns the appointment of traffic wardens and validity of the fixed penalty notice (ticket) issued on her by a traffic warden. Therefore, the following issues are to be determined:
- (1) Whether traffic wardens are performing the duties of police officers under section 23(1)e of the Police Act.
 - (2) Whether the position of traffic warden is a public office within the meaning of section 111 of the Constitution.
 - (3) Whether the appointment of a traffic warden by the Grenada Transport Board is ultra vires sections 84 and 89 of the Constitution.
 - (4) Whether the fixed penalty notice issued on the claimant was valid considering that the Grenada Transport Board lacked the capacity to appointment the traffic warden.

Discussion and Analysis

Whether traffic wardens are performing the duties of police officers under section 23(1) e of the Police Act

- [10] Counsel for the claimant, Mr. James Bristol QC, submits that section 5 of the Police Act provides that one of the functions of the RGPF is the enforcement of all laws and regulations with which it is charged. Further, one of the duties of the RGPF under section 23 (1)(e) of the Police Act is the controlling of traffic upon public roads and removing obstructions therefrom. Mr. Bristol submits that traffic wardens are appointed under section 4 of the Road Traffic Amendment Act of 2018 for the purpose of controlling and regulating traffic in accordance with the Act. Counsel submits that traffic warden by virtue of section 5-14 of the 2018 Act are exercising powers given to police officers as set out in the provision of the Act. Mr. Bristol is certain that traffic wardens are in fact performing the duties of police officers.
- [11] Ms. Dia Forrester, Attorney General, submits that the roles, powers, duties and functions of traffic wardens and police officers are not comparable. Ms. Forrester contends that traffic wardens assist with the management of traffic but are not police officers and were not intended to be police officers. She says that police officers are subject to the Police Act while traffic wardens are subject to the provisions of the Road Traffic Act as amended. Traffic wardens' training are restricted to traffic related matters.
- [12] Ms. Forrester refers the court to the learning of Lady Hale in the Privy Council decision of **Webster and others v Attorney General of Trinidad and Tobago**,⁴ where the court considered whether special reserve police officers performed the same duties as regular police officers and as such were entitled to equal treatment. Lady Hale in interpreting section 4(d) of the Constitution of Trinidad and Tobago stated that “*situations must be comparable, analogous, or broadly similar, but*

⁴ [2015] UKPC 10.

need not be identical. Any differences between them must be material to the difference in treatment”.⁵

- [13] In relation to the appointment of police officers, Ms. Forrester refers to section 111 of the Constitution which makes provision for a Police Force being the RGPF established by the Police Ordinance. **The Police Act No. 38 of 1966** as amended states the duties, powers and functions of the RGPF. Ms Forrester submits that RGPF is not restricted to the duties and functions under section 23(1)(e) of the Police Act and cites sections 5, 22 and 23 of the Police Act. In comparison to police officers, Ms Forrester submits that traffic wardens are subject solely to the statutory regime as set out in the Road Traffic Act as amended and refers the court to section 3B(1), 6(6), 28(1), 30A, 44, 67, 73, 83 and 112 of the said Act. Ms. Forrester submits that the powers of the traffic warden in the Road Traffic Act as amended do not usurp the powers of police officers under section 23(e) of the Police Act.
- [14] Ms. Forrester avers that traffic wardens are utilised to complement the RGPF and refers to the Bennion on Statutory Interpretation⁶ Hansard of Parliament and states that the Parliament intended traffic wardens to play a supporting role in the management of traffic. She says that Parliament is not precluded from empowering other functions to discharge any duty with which the Police Force is charged. Moreover, there is no express prohibition in the Police Act and/or the Constitution that prohibits certain powers, duties and functions of police officers being part of other legislation. Ms. Forrester avers that the uncontroverted evidence also confirms that traffic wardens are not treated in like manner to police officers and their duties are disparate. Ms. Forrester further submits that it was not the intention of Parliament to make traffic wardens police officers, since the traffic wardens have

⁵ Ibid at para. 24.

⁶ Part 7 External Aids to Construction. Chapter 24: External Aids to Construction/Parliament History and later material/ Section 24:11 Hansard – Pepper v Hart.

different powers, their duties specifically limited, trained differently, are governed under different legislative regimes and are employed on contract.

- [15] Ms. Forrester says that the principles of *expressio unius est exclusio alterius*⁷ that is, where a statute expressly mentions a specific person or thing, those not mentioned are excluded is applicable. She submits that the declaration sought by the claimant, Ms. Joseph that all traffic wardens are performing duties of police officers and are therefore by implication police officers, seeks not for interpretation of the Road Traffic Act, but seeks the court to amend the provisions of the said Act by deeming traffic wardens police officers when that was not the intention of the Legislature. Counsel refers to the case of **Indra Williams v Casepak Company (Grenada) Ltd.**⁸

Discussions and analysis

- [16] The court is of the view that the statutory regime for the appointment of traffic wardens and police officers are not comparable and are vastly different. In examining the relevant provisions of statute, the court is to interpret the words in its plain and ordinary meaning. The learning from Chief Justice Dame Pereira in **The Labour Tribunal v St. Lucia Electricity Services Limited** is apt. Her Ladyship held that:

[36] It is settled law that a useful starting point in the interpretation of statutes is to examine and interpret the words in their natural and ordinary sense. The courts can only depart from the literal rule where the outcome of its strict application is one of absurdity. Perhaps the most well-known formulation of this principle is the pronouncement of Lord Chief Justice Tindal in the *Sussex Peerage Case* where he stated: "My Lords, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those

⁷ Stair Memorial Encyclopedia Interpretation of Statutes, Deeds and other Instruments Vo. 12. Subsidiary Principles of Construction. *Expressio Unius est Exclusio Alterius* – 1165.

⁸ [2018] ECSCJ No. 330.

words in their natural and ordinary sense. The words themselves alone do, in such a case, best declare the intention of the lawgiver.”

[37] Lord Diplock in the case of *Duport Steels Ltd and others v Sirs and others* enunciated the rule this way: “...Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law...**the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it.**

Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.” (emphasis mine)

[38] In essence, both Lord Tindal and Lord Diplock affirmed the fundamental principle of statutory interpretation namely that where the words, in their natural and conventional sense, are clear then they must prevail. It is not for the judiciary to ignore the language of the legislature, attach and accept a meaning that the words simply do not have. (Emphasis supplied)

[17] In light of the above authority, it is necessary for the court to examine the legislation governing the duties of the police in relation to the management of traffic and the statutory regime concerning the duties of traffic wardens. **Section 23(1)e of the Police Act** provides:

23. Duties of the police

(1) It shall be the duty of the Force to take lawful measures for—

(e) controlling the traffic upon public roads and removing obstructions therefrom.

[18] Under the provisions of the **Road Traffic (Amendment) Act**⁹ the post of traffic warden was created and some of the duties that were previously solely within the scope of the police were extended to traffic wardens. **Section 5 of the 2018**

⁹ Act No. 16 of 2018.

amendment to the Road Traffic Act amended section 6 of the Principal Act as follows:

5. Section 6 of the principal Act is amended in subsection (6) as follows—
 - (a) by inserting the words “traffic warden or”
before the words “member of the Police Force”;

[19] Further, sections 28, 30A, 44, 67, 73, 83, 98, 112, Part III and the Fifth Schedule of the Principal Act were also amended in like manner by inserting the words “traffic warden” before “police officer” or “member of the police force”. In essence, the 2018 amendment to Road Traffic Act sought to establish traffic wardens and supplement a few of the duties of the RGPF with them.

[20] The various amendments to the sections of the Road Traffic Act are extensive. However, in summary, traffic wardens were given the power and duty, among other things to:

- (1) Inspect whether a motor vehicle is registered under section 6
- (2) Issue fixed penalty notices under section 98;
- (3) Request record of dealer’s general licence of a motor vehicle under section 28;
- (4) immobilize vehicles that are parked in a restricted area contrary to the Act under section 30A;
- (5) request the production of driver’s licences under section 44;
- (6) request the owner of a motor vehicle to remove his/her vehicle which is obstructing the flow of traffic under section 67;

- (7) direct and regulate traffic under sections 73 and 83;
- (8) request the name and address of an offender if the Act under section 112;

Different duties and powers

[21] In view of the above differences in duties and powers, it cannot be said that traffic wardens are in effect police officers. The duties of the RGPF are vastly different from that of a traffic warden. The legislative schemes appointing both positions are also not comparable. For example, the police are given wide powers at common law and in statute under the Police Act¹⁰ to arrest persons found committing summary and indictable offences without warrant. Traffic wardens have no such powers of arrest, and their powers and duties are restricted to controlling and regulating traffic as contemplated by the section 4 of the Road Traffic Amendment Act 2018. Therefore, it is reasonable to conclude that the duties, powers, and functions of a traffic warden are substantially less when compared to a Police Officer who possesses very wide powers and duties.

Different training and treatment

[22] The court also accepts the evidence of SP Connaught that the training and qualifications of traffic wardens are disparate, in that traffic wardens receive one(1) month's training while police officers are trained for twenty four (24) weeks or six(6) months. Traffic wardens are not trained as police officers. It is clear that Parliament did not intend traffic wardens to receive equal treatment as police officers.

¹⁰ Section 26 of the Police Act Cap 244 of the 2010 Continuous Revised Edition of the Laws of Grenada.

Different statutory schemes of appointment

- [23] Police officers below the rank of Commissioner of Police, but above the rank of Sergeant are appointed by the Public Service Commission under section 89(2) of the Constitution as Grenada does not have a separate Police Service Commission. Traffic wardens are employed under a one-year contract of service and as such do not enjoy security of tenure. The Board under the provisions of the contract has the power to terminate a traffic warden in relation to their conduct. Conversely, the position of police officer has continuity and permanence as they are not employed pursuant to temporary contracts. The provisions of the various statutory regimes appointing police officers and traffic wardens must be interpreted in their natural, plain and ordinary meanings.
- [24] Further, the court is of the view that if parliament intended traffic wardens to assume or usurp the powers of the police it would have expressly restricted the police's duty under the Road Traffic Act or remove the police's powers under the Road Traffic Act altogether and section 23 (1) e of the Police Act. Moreover, if parliament intended traffic wardens to become police officers it would expressly enact the necessary statutory regime to appoint traffic wardens as a rank of the RGPF pursuant to the Police Act.
- [25] Having reviewed the evidence of Ms. Anna Brizan and SP Randy Connaught, it is axiomatic that Parliament created the provision for the appointment of traffic wardens to complement or supplement the duties of members of the Police Force. Accordingly, this court is not of the view that a traffic warden, in carrying out his/her duties under the Road Traffic Act, is performing the functions of a police officer pursuant to section 23(1)e of the Police Act.

Whether the position of traffic warden is a public office within the meaning of section 111 of the Constitution.

- [26] Mr. Bristol QC submits that section 111 of the Constitution defines a public officer as “*any office of emolument in the public service*” and “*the public service*” as “*the service of the Crown in a civil capacity in respect of the government of Grenada*”. Queen’s Counsel referenced the Guyana Court of Appeal decision in **Yaw v Correia**¹¹, where the court examined various case law on the interpretation of the word “office”. The court in that case held that the word “office” in the Guyana Constitution should be construed as a post created and designated, and intended to be, of a subsisting, permanent and continuing nature¹².
- [27] Mr. Bristol QC submits that in determining whether an “office” exists it must be construed as a mixed question of law and fact and relies on the dictum of the Guyana Court of Appeal in **Yaw**.¹³ Mr. Bristol also relies on the case of **Evelyn v Chichester**¹⁴ which applied the case of **R v Dr Burnell**¹⁵ to buttress the argument that the court must consider whether the office is one whose nature and duty of office concern the public and not the extent of officer’s authority.¹⁶
- [28] Mr. Bristol QC submits that the office of a traffic warden is also an office in the public service as it is no doubt in service of the Crown in a civil capacity being the identical services performed by police officers who are themselves public officers within the scope of Part IV of the Constitution¹⁷. Further, Mr. Bristol submits that a traffic warden is in receipt of emolument while in the public service as the salary of the traffic warden is paid by the Board utilizing funds appropriated by Parliament.

¹¹ (1975) 65 WIR 144 at pages 149-150.

¹² Ibid at page 150.

¹³ Ibid at page 151.

¹⁴ (1970) 15 WIR 410.

¹⁵ (1698) Carth 478.

¹⁶ Evelyn v Chichester (1970) 15 WIR 410 per Crane JA at page 439.

¹⁷ Per Floissac CJ in Charles Savarin v John Williams (1995) 51 WIR 75 at page 82 .

Queen's Counsel submits that the receipt of pay determines the issue as relies on the dictum of Crane JA in **Evelyn v Chichester**¹⁸.

- [29] The court adopts the learning from former Chief Justice Floissac in **Charles Savarin v John Williams**¹⁹ that the term "public service" in the Constitution is to be construed to mean public officers appointed by the Public Service Commission. In that case Floissac CJ stated that:

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

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

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

¹⁸ at page 440.

¹⁹ [1995] ECSCJ No. 46.

25. The Constitutional definition of the phrase "the public service" was clearly intended to be read and interpreted in the light and context of Chapter VI. So read and interpreted, the phrase must be confined to the institutional service governed and protected by Chapter VI.²⁰ (Emphasis supplied).

[30] In the Court of Appeal of Guyana case of **Yaw v Correia**²¹ E V Luckhoo C stated:

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

When each of these four questions can be answered in the affirmative, then the person who holds the 'office' could be counted a public officer. In other words, there must be an office (a) held by a person appointed by or on behalf of the Public Service Commission, (b) to serve the State, (c) for an emolument; all of which must be duly satisfied before the person serving could be regarded as a public officer.

A Permanent Secretary cannot create an office except specifically authorised by Parliament so to do. **Nor can a judge declare an employment to be an office if the legislature has not in sufficient terms recognised that employment as an office.**²² (Emphasis supplied)

[31] The court notes Mr. Bristol QC's eloquent and scholarly arguments that a traffic warden is an office in the public service which is in service of the Crown in a civil capacity. However, given the above learning from Floissac CJ in **Savarin v Williams** and EV Luckhoo C in **Yaw v Correia**, the court does not accept Mr. Bristol's argument that every person whose office concerns the public or is in service of the State is a "public officer" within the meaning of section 111 of the Constitution.

²⁰ Charles Savarin v John Williams [1995] ECSCJ No. 46 at paras. 22-25.

²¹ (1975) 65 WIR 144.

²² Ibid at page 152.

[32] Further, this certainly would be contrary to the plain and unambiguous words of the Constitution which states that public servants are members of the public service who are appointed by the Public Service Commission. For one thing, the post of traffic warden is not an established post of the public service whose appointment is governed by the Public Service Commission, but is a mere a contract of service, which is temporary in nature and has no degree of continuity or permanence as was held to be a requirement in the case of **Yaw**.

[33] **Section 3B (1) of the Road Traffic Act**²³ as amended is pellucid that the traffic warden, at the material time in this case, was appointed by the Board with the consent or approval of the Minister and the Commissioner of Police. If the court were to follow the reasoning in Mr. Bristol's argument, then it is to conclude that all individuals or holders of office who exercise a public duty or function or whose office serve the State in civil capacity must be construed to be a public officer for the purpose of section 111 of the Constitution. While traffic wardens exercise public functions and duties as prescribed by the Road Traffic Act, it is pellucid that Parliament did not intend to appoint traffic wardens as public officers and/or police officers for the purposes of sections 84 and 89 of the Constitution.

[34] The court, in any event, is guided by the learning in the Privy Council's decision in **Commissioner of Police & Anor. v Steadroy C. O. Benjamin**²⁴ that while the court is to give the provisions of the Constitution a generous interpretation, it ought not to reject the plain and ordinary meaning of the words expressed and import new words. Lord Wilson stated:

“The conclusion of the majority in the Court of Appeal was that the power of the Director to prevent the police from instituting criminal proceedings was implicit in section 88 rather than express. They rightly reminded themselves of the several authorities which, in summary, explain that, in setting the legal architecture of the entire state for the long term, **a Constitution requires a generous interpretation and that changing**

²³ Act No. 16 of 2018.

²⁴ [2014] UKPC 8.

social circumstances can illumine aspects of its meaning which were previously less obvious: see, for example *James v Commonwealth of Australia* (New South Wales intervening) [1936] AC 578 at 614 and *Reyes v The Queen* [2002] UKPC 11, [2002] 2 AC 235 at para 26. **"But that"**, as the Board said in *Attorney-General of Fiji v Director of Public Prosecutions* [1983] 2 AC 672 at 682, **"does not require the courts, when construing a constitution, to reject the plain ordinary meaning of words"**. More narrowly *Edwards JA* in the Court of Appeal also cited section 16 of the Interpretation Act which provides:

"(3) Where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or as are incidental to the doing thereof."²⁵
(Emphasis supplied)

[35] The court is of the view that the words "public service" and "public officer" under the Constitution refer to officers appointed by the Public Service Commission as held in by former Chief Justice Floissac in **Charles Savarin**²⁶. If parliament intended traffic wardens to be public officers, it would have followed the requisite statutory regime to make the post an established post of the public service whose office is appointed by Public Service Commission and governed by its Rules and Regulations.

[36] On the facts of this case, the traffic warden was not appointed pursuant to sections 84 and 89 of the Constitution. The traffic warden, at the material time in issue, was appointed pursuant to a one-year contract of service by the Board and not as a public officer within the scope of the definition in section 111 of the Constitution. The appointment of a traffic warden is governed by the contractual principles of law of contract and not by common law. A traffic warden appointed by contract by the Grenada Transport Board now the Grenada Transport Commission is therefore not within the jurisdiction of the Public Service Commission. The express term of the contract of employment replaces any implied term of the traffic warden being a public officer.

²⁵ Ibid at para. 25

²⁶ [1995] ECSCJ No. 46 at paras. 23-25

Whether the appointment of a traffic warden by the Grenada Transport Board is ultra vires section 84 and 89 of the Constitution

- [37] Mr. Bristol QC submits that if the court accepts that traffic wardens are public officers by virtue of section 84 (1) of the Constitution then they must be appointed by the Public Service Commission and any appointment otherwise is null and void. The court having ruled that a traffic warden is not exercising the functions of a police officer within the scope of the Police Act nor is the traffic warden a public officer within the scope of section 111 of the Constitution need not consider whether the appointment of a traffic warden by the Board is ultra vires sections 84 and 89 of the Constitution.

Whether the fixed penalty notice issued on the claimant was valid given that the Grenada Transport Board lacked the capacity to appointment the traffic warden

- [38] Mr. Bristol QC submits that a traffic warden is employed by the Grenada Transport Board. However, Queen's Counsel says the Board is not a legal entity and therefore lacks the legal capacity to contract. Therefore, there is no contract of employment between a traffic warden and the Board. Queen's Counsel relies on the Halsbury's Laws of England to support his submission,²⁷ where it provides.

"In general, a valid contract may be made by any person recognised by law as having legal personality that is natural persons, corporations and the Crown. However, the following classes of persons are in law incompetent to contract, or may have their capacity to contract limited in certain ways: (1) bankrupts; (2) minors; (3) those suffering from a lack of mental capacity; (4) those under the influence of drink or drugs; (5) partnerships; (6) corporations; (7) receivers of companies; and (8) alien enemies.²⁸"

²⁷ Contract (Volume 22(2019)) 3. Formation of Contract. General Principles of Formation and Capacity. 32 Capacity to contract.

²⁸ Halsbury's Laws of England. Contract (Volume 22 (2019)) 3. Formation of Contract. (1) General Principles of Formation and Capacity to Contract. Para 32. Capacity to Contract

- [39] Conversely, Ms. Dia Forrester, Attorney General, states that the Board, which is now defunct, was a department or agent of the Government and therefore was permitted to employ individuals on contract to work with the Government in accordance with the Road Traffic Act. Further, noting that the Board is no longer in existence, the determination of any issue in relation to it is subject to the principles of mootness and is at best an academic matter²⁹. Since the Board is no longer being in existence, Ms. Forrester submits that the court ought not to hear any matter in relation to declarations 3, 4 and 5 of the claimant's amended originating motion. Ms Forrester states that The Grenada Transport Commission is a body corporate with legal power to contract and employ staff. In essence, counsel is saying that the issues concerning the capacity of the Board are not live issues.
- [40] Mr. Bristol QC submits that the issue is very much a live one as Ms. Joseph's originating motion is predicated on whether or not the fixed penalty notice issued on her by the traffic warden was lawful given the Board's lack of capacity to employ traffic wardens prior to it becoming the Grenada Transport Commission. Mr. Bristol draws the court's attention to the fact that there is a criminal charge against Ms. Joseph which is founded on the validity of the appointment of the traffic warden.
- [41] The court agrees with Mr. Bristol QC that the validity of the traffic warden's appointment is a very live issue. The matter concerning whether the Board, at the material time, had the legal capacity to contract and appoint traffic wardens goes to the root of the originating motion as to whether the fixed penalty notice issued on Ms. Joseph was lawful.
- [42] It is necessary to examine the provisions of the Road Traffic Act in relation to the establishment of the Board. The Grenada Transport Board was a creature of statute

²⁹ Whether issue is an academic matter, please see **R (on application of Zoolife International Ltd) v Secretary of State for Environment, Food and Rural Affairs** [2007] EWHC 2995.

and was established by section 3 of the Road Traffic Act as amended. **Section 3 of the Road Traffic Act** provides:

- (1) There is hereby established for the purposes of this Act a body called the Grenada Transport Board (hereinafter referred to as the Board) consisting of the Chief Technical Officer as chairperson, the Commissioner of Police, the Officer-in-Charge of the Traffic Department of the Police Force, a representative of the Attorney-General from the Ministry of Legal Affairs, a representative of insurance companies appointed by the Minister, and not less than three but no more than five other persons appointed by the Minister, at least two of which such other persons shall ordinarily represent the interests of owners of public service vehicles.

In the absence of the chairperson the members present shall elect one of their members to preside as chairperson of the meeting. The Board may act by any three of their members and may so act notwithstanding any vacancy in the numbers constituting the Board. The Board shall have the power to regulate their procedure.

- (2) The Permanent Secretary in the Ministry of Communications and Works shall be the Secretary to the Board and, subject to the directives of the chairperson, shall be responsible for co-ordinating the activities of the Board.
- (3) The Board shall act in an advisory capacity and shall advise the Minister on all matters pertaining to road transport and traffic and in particular as to the following matters—
 - (a) transport rates, fares, tolls, dues or other charges;

- (b) licence duties and fees in respect of motor and other vehicles;
- (c) customs and excise duties in respect of transport vehicles and fuel therefor;
- (d) the needs of any area or areas in relation to traffic (including the provision of adequate, suitable and efficient services and the elimination of unnecessary or unremunerative services) and the co-ordination of all forms of passenger and goods transport;
- (e) road safety;
- (f) the regulation and control of traffic;
- (g) any other matter affecting traffic or transport that the Minister may refer to the Board;
- (h) regulating road transport.

- (4) The Board shall hear and determine any appeal submitted by any aggrieved person against any order or decision of the Licensing Authority, or of a Licensing Officer, and the Board's decision shall be final and conclusive.
- (5)
- (6)
- (7) The Board shall perform such other duties as are assigned to it by this Act or regulations made hereunder.

[43] **Section 12 of Road Traffic (Amendment) Act 2018** amended Part VIII of the Road Traffic Act, including section 98 to insert the words “traffic warden” whenever the words “member of the Police Force” appears. Section 12 provides: ***“The principal Act is amended in Part VIII by inserting the words “traffic warden or” before the words “member of the Police Force” wherever they appear”.***

- [44] In relation to the traffic warden's power to issue fixed penalty notices, **section 98 of the Road Traffic Act** as amended provides:

98. Member of Police Force may give or affix notice

(1) Where a [traffic warden or] member of the Police Force of or above such rank as may from time to time be prescribed by the Commissioner of Police has reason to believe that an offence to which this Part relates has been or is being committed with or in respect of a motor vehicle, it shall be lawful for him or her to give to the driver of that vehicle a notice charging him or her with the commission of such offence, and notifying him or her that a complaint will be made against him or her in respect thereof and requiring him or her either to pay the fixed penalty within the time specified in the notice or to appear at the court specified in the notice on the day and at the hour stated therein to answer the said complaint:

Provided that...

Provided further ...

(2) Subject to this section....

(3) A notice affixed ...

(4) (Underlining supplied)

- [45] By virtue of the conjoint effect of **Section 98 of the Road Traffic Act as amended and Section 12 of the Road Traffic (Amendment) 2018**, a traffic warden is conferred with the power and authority to issue fixed penalty notices under the Road Traffic Act as amended. However, the court accepts Mr Bristol's submission that at the material time and prior to the 2020 amendment to the Road Traffic Act, the Board was not a body corporate. The Board by virtue of the Road Traffic (Amendment) Act 2020 later became a body corporate through the establishment of the Grenada Transport Commission.

[46] However, notwithstanding the fact that the Board, at the material time, was not a body corporate when it appointed the traffic wardens, the court notes that **Section 4 of Road Traffic (Amendment) Act 2018** which inserted a new section titled “3B”, specifically authorised and conferred power on the Board to appoint traffic wardens. The said section provides:

4. The principal Act is amended by inserting after section 3A the following new section–

3B (1) The Grenada Transport Board, with the approval of the Minister and on the recommendation of the Commissioner of Police, may appoint traffic wardens in accordance with Amendment to section 3 of principal Act this section for the purposes of controlling and regulating traffic in accordance with this Act. (Underlining supplied)

[47] Further, the court notes that Ms. Joseph did not specifically challenge the statutory authority conferred on the Board to appoint traffic wardens, but merely relied on the common law to support her argument that the Board did not possess the lawful authority as a body corporate or legal entity to appoint them. I am of the view that in order for Ms. Joseph to successfully challenge the lawfulness of the Board’s power to appoint the traffic wardens, she had to plead or argue that Parliament gave the Board no such authority to appoint traffic wardens which was ultra vires. However, Ms. Joseph’s pleaded case fails to assert or challenge the Board’s statutory authority to appoint traffic wardens and therefore the court is constrained to Ms Joseph’s pleaded case.

[48] The court is of the view that the Board was specifically and expressly conferred with statutory power and authority from the Legislature to appoint traffic wardens by virtue of section 4 of the Road Traffic (Amendment) Act 2018 (Act No. 16 of 2018). The appointment of traffic wardens, for the purposes of regulating and controlling

traffic and issuing of fixed penalty notices, was within the remit of the Board in accordance with the Road Traffic Act as amended. Therefore, the fixed penalty notice issued by the traffic warden on Ms. Claudette Joseph on 29th September 2020 was lawful.

Conclusion

[49] For reasons given above, Ms. Joseph's originating motion as amended is refused with no order as to costs.

Agnes Actie
High Court Judge

By the Court

Registrar