

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SKBHCV2015/0189

BETWEEN:

DAIL CRAWFORD

Claimant

and

THE PUBLIC SERVICE COMMISSION OF ST. KITTS AND NEVIS

Defendant

Appearances:

Mr. Perry Joseph for the Claimant

Mrs. Simone Bullen Thompson, Solicitor General, for the Defendant

2020: June 17
 July 31
 September 29

JUDGMENT

[1] **GILL, M:** On November 23, 2017, on a claim for judicial review, Carter J. handed down judgment in favour of the claimant Dr. Dail Crawford against the defendant, the Public Service Commission of St. Kitts and Nevis ("the PSC"). By a fixed date claim, Dr. Crawford challenged the decision of the PSC to suspend him indefinitely from his post as a consultant gynaecologist/obstetrician (OB/GYN) at the Joseph N. France General Hospital.

[2] He sought and obtained, *inter alia*, a declaration that he was denied his right to natural justice and, in particular, his right to procedural fairness in contravention of the provisions of Section 32(2) of the Public Service Act, a declaration that the recommendation of the PSC to the Governor General

was in contravention of Section 32(2) of the Public Service Act and unlawful, and an order of certiorari to quash the decision of the Governor General, acting on the recommendation of the PSC to suspend him with half pay. Her Ladyship ruled that Dr. Crawford is entitled to damages to be assessed and costs to be assessed pursuant to CPR 65.12 if not agreed. In his application for assessment of damages, Dr. Crawford claims general damages, exemplary damages and vindictory damages.

Background facts

- [3] Dr. Crawford is a medical doctor specialising in Gynecology and Obstetrics. As a registered consultant OB/GYN practitioner, he has a licence to conduct a private medical practice in St. Kitts and Nevis. In March 2012, he was appointed as an OB/GYN practitioner at the Institution-Based Health Management Services and at the Ministry of Health. Both appointments had retroactive effect from December 13, 2011.
- [4] Dr. Crawford was granted privileges to use the Joseph N. France General Hospital (hereinafter “the hospital”) for his private patients’ care. His hospital privileges meant that as a private practitioner, he was allowed access to, and use of, the hospital’s resources and amenities to care for his private patients. He avers that between 2012 and 2014, his private practice grew and became very lucrative. Up to the time of his application for assessment of damages, he was the only Kittitian born OB/GYN practicing in the Federation.
- [5] It appears that as a result of several complaints raised in relation to Dr. Crawford’s performance as an OB/GYN, on September 12, 2014 he attended a meeting at the hospital’s conference room at the invitation of the Medical Chief of Staff (“the MCS”) of the hospital. At that meeting which was also attended by other medical personnel, the MCS, who is a member of the Medical Board of the hospital, raised several cases of alleged mismanagement on the part of Dr. Crawford. Save for one case under his care, Dr. Crawford was unaware that the matters raised were the subject of formal complaints. At the end of that meeting, the MCS told him that his hospital privileges were all suspended.

- [6] Thereafter, the Medical Board upheld the suspension of Dr. Crawford's privileges. The Medical Board invited him to a meeting to discuss the cases of alleged mismanagement and professional misconduct. At that meeting on November 28, 2014, Dr. Crawford read a prepared statement under protest, raising the issue that he was not afforded an opportunity to respond to the allegations, and he left the meeting.
- [7] By letter dated February 25, 2015, the PSC informed Dr. Crawford that the Governor General had approved the recommendation of the PSC that he be suspended pending an investigation by the Medical Board.
- [8] Dr. Crawford's attorneys wrote to the chairman of the PSC pointing out the breach of the rules of natural justice and demanded Dr. Crawford's reinstatement. When the matter of his reinstatement was not addressed, Dr. Crawford sought redress in the court by way of an application for judicial review.
- [9] Carter J. ruled that the PSC breached section 32(2) of the Public Service Act by suspending Dr. Crawford without allowing him to make representations in his defence and that the recommendation to the Governor General to suspend him was unlawful.

Application for damages

- [10] In assessing damages, Dr. Crawford is asking the court to take into consideration the issues raised in his affidavit in support of his application. He swore that the PSC's actions caused a disruption in his career and the suspension has crippled his practice in that his reputation has been damaged irreparably.
- [11] Dr. Crawford remained under suspension from the civil service up to the date of this application. He considers this a clear and unambiguous flout of the court's jurisdiction. He insists that the fact that the PSC has not tabled his reinstatement or, at least, met to discuss the issue (that is, up to the time of making this application), reveals a nefarious intent to their actions. In refusing to right its wrong, he opines that the PSC is signaling that it intends to thumb its nose at the jurisdiction of

the court, and to do so indefinitely. In this regard, he asserts that the conduct of the PSC has been oppressive.

- [12] By letter dated February 2, 2018, Dr. Crawford wrote to the chairman of the PSC requesting that his case be revisited having regard to the decision of Carter J., indicating that the ruling cleared the way for his reinstatement to the hospital. The PSC responded by letter dated February 7, 2018 stating that it would meet later in the month to discuss his case and that further communication would follow “in the near future”. To the contrary, he states that to date the PSC has refused to engage him further on his case and, therefore, he deduces that his suspension has been extended indefinitely.
- [13] Dr. Crawford contends that the PSC acted outside the scope of its authority when it purported to suspend him without conducting its own inquiry and/or investigation. Further, the failure of the PSC to hold any disciplinary hearing in relation to him was an abdication of its constitutional duties and statutory duties to the Medical Board.
- [14] He considers the most serious harm as that inflicted on his professional reputation. He claims that his patients were forced to see other doctors against their wishes. Further, rumours surfaced about disparaging and untrue stories of him committing various acts of professional negligence. These rumours, he contends, were spread by hospital employees to the public and, specifically, his patients who were pressured to find another OB/GYN because of his suspension for incompetence. In support of these contentions, he submits the affidavit evidence of Valencia Cannonier, a longstanding patient of his, who deposed that in 2017 when she experienced certain medical issues, Dr. Crawford referred her to another doctor because he could not use the hospital’s facilities to perform a procedure she required. She reported that each time she attended the hospital, the nurses approached her and made comments such as, “Don’t go to Crawford” and “Crawford is not a good doctor”.
- [15] Dr. Crawford informs that surgeries and deliveries, his main sources of income in private practice yielded high income but because of his suspension, he has not been able to perform any deliveries or surgeries. This loss of income has put financial strain on his family. The increased

financial constraints caused by his suspension have caused him serious and emotional distress, having to start and build a successful practice to ensure economic comfort for his family.

[16] Further, Dr. Crawford laments that the period of suspension has denied him the right to practise fully as an OB/GYN, leading to a depreciation of his skills. He explains that in order for him to stay sharp and perform at the highest level, he must be able to perform surgeries and deliveries on a regular basis.

[17] Based on the foregoing, Dr. Crawford claims general damages in the sum of \$100,000.00, exemplary damages in the sum of \$30,000.00 and vindictory damages in the sum of \$50,000.00.

The response

[18] The main thrust of the PSC's response in opposition to Dr. Crawford's application is set out in the affidavit of its chairman, Dr. Patrick Welcome. Dr. Welcome admits that the PSC never held a hearing in relation to Dr. Crawford's matter. He avers that Dr. Crawford was suspended by the PSC only from his post in the government service but that his privileges to conduct his private practice were suspended by the administration of the hospital and the Ministry of Health. He states that the PSC's decision only prevented Dr. Crawford from practising in the government service, and therefore it is not accepted that the PSC's decision denied him of his right to practise or his patients' rights to access a doctor of their choice.

[19] Dr. Welcome asserts that statements allegedly made by employees of the government cannot be attributed to the PSC or the decision of the PSC that gave rise to his suspension, and that Dr. Crawford is entitled to bring a claim in the High Court in relation to any defamatory statements made about him. In addition, he contends that the decision of the PSC cannot be the sole or main reason why persons question Dr. Crawford's professional integrity and ability to practise because he has another case before the Court in relation to the suspension of his privileges and has matters pending before the Medical Board.

[20] His affidavit evidence further reveals that after the judgment of Carter J., Dr. Crawford wrote to the PSC asking that his matter be revisited and in March 2020, his attorneys wrote to the PSC in relation to his reinstatement. Dr. Welcome exhibits the minutes of PSC meetings highlighting the PSC's need for further information from the Ministry of Health to guide the PSC in its deliberations. Following another letter dated August 12, 2019 from Dr. Crawford's attorneys, at its meeting held on August 29, 2019, the PSC took the decision to reinstate Dr. Crawford. However, he depones, following this decision; the Ministry of Health wrote asking that the PSC reconsider its decision.

[21] In answer to Dr. Crawford's assertion that the public nature of the actions of the PSC caused him distress, Dr. Welcome points out that the PSC does not release information in relation to its proceedings and its decisions to the public, including the media. The secretary of the PSC normally communicates its decision to the Chief Personnel Officer who then forwards the decision to the relevant Ministry or Department and the individual affected.

[22] Dr. Welcome concludes his affidavit with Counsel's advice that Dr. Crawford is not entitled to damages as the actions of the PSC did not cause him to suffer the damage alleged and he has not by his claim or this application established his entitlement to the damages he seeks.

Issue

[23] As this application is in judicial review proceedings, the court must determine whether Dr. Crawford is entitled to damages and if so, the quantum of damages to be awarded to him.

The law

[24] Rule 56.8 of the Civil Procedure Rules 2000 governs the granting of an award of damages in a claim for judicial review. Sub-rules (1) and (2) read as follows:

"56.8 (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –

- (a) arises out of; or
- (b) is related or connected to;

the subject matter of an application for an administrative order.

(2) In particular the court may, on a claim for judicial review or for relief under the Constitution award –

- (a) damages;
 - (b) restitution; or
 - (c) an order for return of property to the claimant;
- if the –
- (i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
 - (ii) facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
 - (iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.”

[25] In the case of **Wesk Limited v St. Christopher Air and Sea Ports Authority**, the scope of this rule was discussed and the court concluded as follows:

“The effect of all this is that damages can only be awarded in judicial review proceedings if the claimant bases his or her claim on a recognized cause of action at common law. In other words, CPR 56.8(2) is, first, ensuring that claimants do not believe that the remedies are available at large and second, merely *reflecting* the common law position that there is no right to claim damages for losses caused by unlawful administrative action.”¹

Underlying claim

[26] On the authority of **Wesk**, the PSC submitted that in judicial review proceedings, damages are not as of right and Dr. Crawford must establish that his claim is based on some recognized cause of action at common law. In this regard, the PSC argued that Dr. Crawford did not put forward any such claim and has no recognized common law claim against the PSC on which to ground his

¹ SKBHCV2017/0241, per Ventose J. at paragraph 29 of the judgment

claim for damages. The learned Solicitor General explained that the PSC is an independent body established by the Constitution of St. Kitts and Nevis tasked with making recommendations to the Governor General pertaining to the appointment, removal and discipline of public officers (section 78 of the Constitution). Dr. Crawford does not have a contract with the PSC. The PSC is not a body with a juridical personality that permits it to be sued in civil proceedings. The claim that Dr. Crawford is entitled to bring against the PSC is a public law claim for judicial review. This is the type of claim he has brought.

[27] Dr. Crawford contends that the claim establishes the tort of breach of statutory duty.

Breach of statutory duty

[28] Learned counsel for Dr. Crawford, Mr. Joseph, relied on the case of **Samanthia Charms Joseph v Digicel (St. Lucia) Ltd.** in which the court stated that breach of statutory duty is seen as a tort that is equivalent to the common law of negligence but it is a distinct cause of action at common law.² Does this cause of action exist in the present matter?

[29] Dr. Crawford alleges breach of section 32(2) of the Public Service Act. The nature of the breach under that provision is that the public officer is not afforded due process by the decision maker to provide an opportunity to make representations.

[30] In **X (Minors) v Bedfordshire County Council**,³ Lord Browne-Wilkinson explained that whether breach of statutory duty gives rise to a private law action depends on the legislative intention. His Lordship stated:

“The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However, a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty. ... If the statute provides no other remedy for its breach and the Parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to

² SLUHCV2015/0637, per Cenac-Phulgence J. at paragraph 18 of the judgment

³ [1949] AC 155, at page 168

confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action.... However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the construction of the statute the protected class was intended by Parliament to have a private remedy.”

[31] Mr. Joseph’s argument is that by virtue of section 2 of the Public Service Act, Dr. Crawford falls within a specific class of persons, being public officers as defined under the Constitution of St. Kitts and Nevis. All relevant provisions of the Act refer to this specific class of persons. Mr. Joseph was of the view that there is no specific remedy available under the Act for a breach of section 32(2). However, he asserted that it is clear that the intention of parliament is that there is protection afforded to this specific class of persons.

[32] Mr. Joseph impressed upon the court that both the amended fixed date claim and the affidavit in support set out the parameters of the tort of breach of statutory duty, although not specifically pleaded. He cited the case of **Maria Caines v The Labour Commissioner and the Attorney General of St. Christopher and Nevis**⁴ in which it was submitted that the claimant had a recognized cause of action for breach of statutory duty and/or misfeasance in public office by the first defendant. The torts were not specifically pleaded but the court found that a case of misfeasance had been made out and this was a proper case for the consideration of damages, including exemplary damages, having regard to Rule 56.8(2) of CPR 2000. In an assessment of damages after a successful application for judicial review in **Otto Sam v Tyrone Burke, Chief Personnel Officer**,⁵ the defendant argued, in effect, as the court summarised, that there was no pleading in respect of a claim for a private law action, and that there was no basis for an award of damages. Glasgow M., as he then was, ruled that this position was incorrect as it was specifically pleaded in the statement of claim that the claimant’s transfer was in contravention or breach of his letter of appointment, the relevant collective agreement and the civil service order. Among other remedies sought in his prayer for relief was an order for an award of arrears of damages. The court reasoned that the request for damages was “in the nature of a prayer for the return of the emoluments lost by reason of his illegal transfer and so he is entitled to recover same”.

⁴ SKBHCV2011/0177

⁵ SVGHCV2010/0399

- [33] By virtue of section 32(2) of the Public Service Act, the PSC, in making a recommendation to the Governor General to suspend a public officer, must have regard to any representations made by the officer in his or her defence. Mr. Joseph advanced that a reading of the pleadings reveals that the PSC failed and/or refused to provide Dr. Crawford with an opportunity to make representations against several allegations. Moreover, Counsel urged, Dr. Crawford avers that context of the breach is relevant; not only did the PSC fail to act under section 32, it did so by abdicating its remit to the Medical Board in circumstances where it was clear and unequivocal that such an act constituted a breach of the provision.
- [34] Before answering the substantive question whether Dr. Crawford has established a claim for breach of statutory duty as he contends, the learned Solicitor General made pronouncements akin to *in limine* submissions.
- [35] First, Mrs. Bullen Thompson maintained that the nature of the underlying claim, if it exists, being that of a tort claim, is not a claim that can be brought against the PSC. Counsel drew the court's attention to the fact that in the cases of **Maria Caines** and **Otto Sam**, the underlying claims were brought against the Attorney General, the Labour Commissioner and the Chief Personnel Officer respectively. These are officers of the Crown who can be sued in tort. By contrast, the PSC is an independent constitutional commission and does not enjoy similar status to the Crown.
- [36] Secondly, Mrs. Bullen Thompson insisted that the claims for damages are based on allegations against other individuals and not the PSC and should be brought against those individuals and not the PSC. An example of this is the alleged conduct of the staff at the hospital. Counsel contended that any damage to Dr. Crawford's practice, his ability to earn his income or other like damage, arises not as a result of the actions of the PSC, but from the suspension of his privileges by the administration of the hospital. This suspension meant that he could no longer attend to his private clients at the hospital. Counsel pointed out that the suspension was upheld by the court in **Dail Crawford v Medical Board of Saint Christopher and Nevis et al.**⁶

⁶ SKBHCV2017/0169

[37] In relation to the alleged existence of an underlying claim, Mrs. Bullen Thompson submitted that Dr. Crawford has not shown that a breach of section 32(2) of the Public Service Act as alleged amounts to the tort of breach of statutory duty. Carter J. made no such finding. Counsel argued that the Public Service Act does not confer a private law cause of action for breach of statutory duty. There is no intention expressed in the Act to confer a private law cause of action on Dr. Crawford or any other employee of the government falling within the ambit of the Act.

[38] Mrs. Bullen Thompson advanced that the legislation clearly outlines how breaches of the Act are to be dealt with. Section 52 of the Act sets out a right of appeal as follows:

“A public officer in respect of whom a decision is made by the Governor-General in accordance with the provisions of this Act may, if the officer is aggrieved by the decision, appeal against the decision of the Governor-General, and the appeal shall lie to the Public Service Appeals Board in accordance with section 87 of the Constitution.”

[39] Section 87(1)(a) of the Constitution provides for appeal to the Public Service Board of Appeal from

“...any decision of the Governor-General, acting in accordance with the recommendation of the Public Service Commission or the Police Service Commission, to remove a public officer from office or to exercise disciplinary control over a public officer...”

[40] Therefore, Mrs. Bullen Thompson summed up, the Constitution and the legislation clearly outline the way in which matters of government employees vis-à-vis the PSC should be addressed. This provides an accessible and effective remedy and in the absence of express language in the legislation conferring a private law right, the learned Solicitor General respectfully submitted that none exists.

Discussion and analysis

[41] Dr. Crawford sought and obtained a declaration that the action of the PSC in its recommendation to the Governor General was in contravention of section 32(2) of the Public Service Act and unlawful. The amended fixed date claim and affidavit in support set out that he was suspended from his office without being given the opportunity to make representations as required by section 32(2). Clearly, this amounts to a breach of the duty imposed by the statute on the PSC to afford Dr. Crawford an opportunity to be heard before recommending his suspension to the Governor General.

[42] The question is whether a cause of action exists for breach of section 32(2). Public officers are the protected class of persons under the legislation. As submitted by the PSC, the Public Service Act makes provision in section 52 for a right of appeal to the Public Service Appeals Board for public officers aggrieved by decisions of the Governor-General. Considering the prospect of an officer appealing as aforesaid, and assuming the officer is successful in his appeal before the Board, what is the result of that process? In the case of an unlawful suspension on half pay, the officer may be reinstated and be paid all emoluments owing to him or her for the period of his or her unlawful suspension. However, the Board would not have jurisdiction to make any award for damages the officer may have suffered as a result of the breach. This must mean that the officer has the right to bring a private law action for breach of statutory duty for a contravention of section 32(2) of the Public Service Act. Therefore, my ruling is that a private law claim for breach of statutory duty is set out in Dr. Crawford's pleadings for which a right of action exists in private law.

[43] I now turn my attention to the issue of whether the underlying claim for breach of statutory duty can be brought against the PSC. The learned Solicitor did not provide the court with any authority for the contention that the PSC cannot sue or be sued in private law. Counsel gave the example that Dr. Crawford could not sue the PSC if he did not receive his salary for the period of his suspension.

[44] This point was dealt with in **Newlin Dyer v Public Service Commission and Director General Finance and Planning**. In that case, a customs guard, by a statement of claim endorsed on a writ of summons, claimed that the second defendant wrongfully terminated his employment by deeming him to have abandoned his employment, and refused to permit him to resume his employment. He alleged that the first defendant, the PSC, refused to employ him any longer. He sued for 33 months loss of salary and a declaration that he was entitled to resume his employment. Mitchell J. ruled as follows:

“The Public Service Commission is a creature of the Constitution placed there to supervise the relations between the Crown and its employees, the public servants of St. Vincent and the Grenadines. If the fathers of the nation, in framing the Constitution, had intended to constrain the right of a public officer to question the performance by the PSC of its constitutional function by the Courts, then they would have done so by express words in

any of the Constitution, the Crown Proceedings Act or the Public Officers' Protection Act. They did not do so. I, therefore, hold that the action can proceed against the 1st Defendant."⁷

The learned judge further ruled that the second defendant, a public officer, enjoyed the protection of the two Acts in question, was improperly joined as a party and ordered his name to be struck from the action as a party.

[45] As pointed out by Mrs. Bullen-Thompson, the Chief Personnel Officer, and not the PSC, was the defendant in the **Otto Sam** case. From my reading of the case and the appeal that followed, the reason for that is evident. Mr. Tyrone Burke, the Chief Personnel Officer, signed the letter purporting to assign Mr. Sam. In that letter, no mention was made of the PSC or any other authority so that one could ascertain under whose instructions he was acting. In fact, Baptiste JA., in the appeal judgment, pointed out that the appellant was not a member of the PSC, nor was he the secretary to the PSC and in fact, being a serving public officer, was precluded by the Constitution of St Vincent and the Grenadines from being a member of the PSC.

[46] Notwithstanding the pronouncements of Mitchell J. in **Newlin Dyer**, one is hard pressed to find a case where the PSC is sued specifically in a private law action. However, the distinguishing point in this case is the order of the learned judge that Dr. Crawford is entitled to damages to be assessed. This is a separate and distinct order from Her Ladyship's order that Dr. Crawford was to receive the portion of his salary that was deducted during his interdiction. It should be noted that this part of the suspension letter was not implemented but had it been, there would be no need to carry out an assessment of damages as the lost income would be easily calculable. Clearly, Carter J. intended for damages to be assessed for injury or loss suffered by Dr. Crawford as a result of the breach in procedure in suspending him. As discussed later at paragraphs 59 to 62 herein, by the judge's decision, the nature of the proceedings changed to a private law action. That being so, in my view, Dr. Crawford is not required to intitle the matter differently. The proceedings continue against the PSC.

⁷ Suit No. 311/92, at page 4 of the judgment (delivered May 13, 1997)

General damages

- [47] The purpose of damages is to put the claimant insofar as practicable in the financial position he would have been but for the impugned act. Dr. Crawford is entitled to damages for the breach of the PSC's duty under section 32(2) of the Public Service Act. I accept that the suspension itself would have caused him some distress and that his reputation would have suffered to some degree. The fact that the first Kittitian born OB/GYN was suspended from the Federation's main hospital certainly would have an unfavourable impact on his reputation, practice and career.
- [48] However, there is merit in the PSC's argument that some of the allegations detailed in Dr. Crawford's affidavit in support of this application are not attributable to the PSC. The allegations that medical personnel spread rumours that Dr. Crawford was an incompetent doctor, nurses pressured his patients to find another OB/GYN, adverse and defamatory statements were published on Facebook by private citizens and a former government minister cannot be said to be the actions of the PSC. I agree with the PSC's submissions that Dr. Crawford is entitled to take action against the individuals he alleges acted in such a manner as to disparage his character and negatively impact his practice.
- [49] During oral submissions, the court sought clarification from counsel on the issue of the suspension of Dr. Crawford's hospital privileges. Both counsel were on the same page in informing that Dr. Crawford's suspension from the government service by itself did not suspend his hospital privileges to attend to his private patients at the hospital and to use the hospital facilities for surgeries and deliveries with respect to his private patients. The suspension of Dr. Crawford's hospital privileges was an act of the Medical Board. That being the case, I fail to see how damages flowing from the suspension of his hospital privileges can be the responsibility of the PSC. Dr. Crawford's private patients were free to solicit his services and he could attend to them at his private facilities or other facilities not under government control. Unfortunately, it appears that Dr. Crawford depended solely on government facilities to conduct his entire practice. With the suspension from government service, Valencia Cannonier and other loyal patients of Dr. Crawford were at liberty to access his services outside of the government's facilities. As was done, any action for the suspension of his hospital privileges should be taken against the Medical Board.

[50] Based on the impact the unlawful suspension itself would have had on Dr. Crawford, I am of the view that an appropriate award for general damages in this matter is \$50,000.00.

Exemplary damages

[51] On the application for assessment of damages, Dr. Crawford claims an award of \$30,000.00 under this head. Exemplary damages “may be granted in order to punish the wrongdoer, both for the oppressive arbitrary nature of the wrongdoing and its calamitous impact upon the victim”.⁸ Dr. Crawford averred that the failure of the PSC to adhere to the duty to provide him with an opportunity to be heard was high handed and he emphasised the impact this conduct has had on him. He was removed from the hospital, which created an environment at the institution for his name to be unfairly smeared. Dr. Crawford rationalised that regardless of the allegations of misconduct lodged against him prior to his suspension, his unlawful removal would have given oxygen to the allegations that the PSC itself failed to investigate.

[52] In **Maria Caines**, the court accepted the submissions of the claimant that the Labour Commissioner’s conduct was so egregious as to justify an award of exemplary damages. In that case, the claimant submitted a claim to the Labour Commissioner for severance pay. A period of 14 months elapsed without a response. The claimant then applied for an order of mandamus to compel the Labour Commissioner to make a decision on the claim. On the day before the claimant’s application for mandamus was to be heard, the Labour Commissioner made the decision that the claimant was not eligible for severance pay. No reasons were given for the decision. Through a solicitor’s letter, the claimant asked the Labour Commissioner to reconsider his position. He never responded to the letter. After being granted leave, the claimant made an application for judicial review. No defence to the judicial review claim was filed. When the matter came on for first hearing, the Labour Commissioner was absent without excuse. The court granted the claimant’s application and quashed the Labour Commissioner’s decision. The matter was remitted to him for his reconsideration. Thomas J. (Ag.) ruled that the Labour

⁸ See *Marin and another v Attorney General of Belize* [2011] CCJ 9 (AJ), at paragraph 12, quoted in *Maria Caines* supra at note 3, at paragraph 16 of the judgment

Commissioner's action, of lack thereof fell to be categorised as high handed and, accordingly, awarded the claimant exemplary damages in the sum of \$20,000.00.

[53] Dr. Crawford is of the view that the facts in this case demand a higher award than that in **Maria Caines** given the important nature of the work he undertook at the hospital.

[54] From two standpoints, the PSC insisted that no award of exemplary damages should be made in this matter. First, Dr. Crawford, in his claim, did not seek exemplary damages. Further, the facts of the case do not give rise to such an award.

[55] The PSC's stance on the first aspect is grounded in CPR 8.6(3), which reads: "*A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.*" Dr. Crawford did not specify in his claim form that he seeks exemplary damages. On this point, Mrs. Bullen-Thompson cited the case of **Royal George v The Attorney General of the Commonwealth of Dominica**.⁹ Actie M., as she then was, in assessing damages for wrongful arrest, false imprisonment and assault and battery, declined to make an award for exemplary damages as the claimant had failed to plead and particularise exemplary damages in his claim form as required by CPR 8.6(3). The claimant's argument that the court had an inherent jurisdiction to award exemplary damages did not find favour with the court. At paragraph 15 of the judgment, the learned master stated:

"A party should not exploit the inherent jurisdiction of the court in an effort to circumvent a rule or statutory provision that may impose or proscribe procedures in relation to pleadings or procedures."

[56] The PSC also relied on **Rambally Blocks Limited v The Comptroller of Customs and Excise**.¹⁰ This was a claim for judicial review where the claimant sought to amend its claim by adding, *inter alia*, a claim for exemplary damages. The amendments were struck out on the basis that the additional relief in the further amended fixed date claim form sought to expand the claim for judicial review for which leave had been granted and required further leave of the court, which had not been granted.

⁹ DOMHCV2014/0021

¹⁰ SLUHCV2014/0100

- [57] In summary, on this aspect of the argument, the PSC respectfully contended that since there is no claim for exemplary damages before the court, the court should decline an award under this head.
- [58] Further, Mrs. Bullen Thompson posited that the PSC did not act highhandedly or in bad faith with the intention of causing any injury but sought to act in the public interest in light of the serious allegations of misconduct on the part of Dr. Crawford.
- [59] Mr. Joseph's response to this submission is that the court may grant an award for exemplary and vindictory damages on an application for assessment of damages, which application was made by Dr. Crawford. Counsel urged the court to apply the reasoning in the **Otto Sam** case where the claimant applied for special damages such as annual duty allowance, and also claimed vindictory damages on assessment subsequent to pleadings. Special damages must be specifically pleaded and proved. The Chief Personnel Officer argued that special damages for the sums claimed were not pleaded and/or proved. The claim was one in public law to set aside an order to remove the claimant from office and transfer him to another post. No issue of wrongful dismissal arose. The trial judge ruled that the order was illegal with the natural consequence that the claimant remained in his previous post of head teacher. The learned master, on assessment, found that another natural implication of the judge's ruling was that the claimant was entitled to receive arrears of salary and other benefits owed to him for the period of the illegal transfer. The master noted that "...this is a feature of cases of this nature that do not easily sit with the ordinary rules of pleadings in a private claim". The court considered the unique dimensions of the application for assessment and was satisfied that the claimant in his application for assessment of damages properly raised the claim for lost benefits.
- [60] In **Otto Sam**, the court applied the reasoning of the court of appeal in **McIntyre Paul v the Commissioner of Police et al.**¹¹ In similar circumstances, Barrow JA provided invaluable insight into the issue. As did the learned master in **Otto Sam**, I quote extensively from paragraph 47 and the entire paragraph 48 of the judgment as follows:

¹¹ DOMHCVAP 2006/0026

“[47] The point the learned Solicitor General wished to argue was that the appellant made no claim for wrongful dismissal and, thus, no claim for special damages. A claim for special damages must be specifically pleaded, the Solicitor General argued, and if not pleaded the amount that should have been pleaded may not be awarded.

[48] Accepting the proposition to be as stated, which we do purely for the purpose of argument, the peculiar history of this claim, which started off solely as a claim in public law, makes it impossible to apply that rule. It is not the case that the appellant failed to plead special damage when he should have done so; he could not have done so because he never made a claim that could have included an award of special damages. Actually, we remain at a loss as to the basis on which the appellant claimed the general damages that he did. The rule that a claimant must plead special damage applies to private law claims and, until the judge altered the nature of the claim, the appellant claimed only in public law. When the appellant filed his affidavit of damage he gave detailed particulars of the special as well as the general damages he sought and, therefore, we regard the appellant as being compliant with the rule at the time he was required to be.”

- [61] In the instant case, Mr. Joseph put forward that CPR 8.6 is a feature of a private law claim and the intention is that it governs damages in private law matters. When the court voided the order for suspension, the nature of the claim was altered as the order meant that Dr. Crawford was never suspended and he can apply for damages for the injury he suffered as a result of the illegal act. The court now has jurisdiction to award damages under the heads now claimed. Counsel submitted that the same principle that allows a claim for special damages on assessment applies for exemplary and vindictory damages.

Discussion and analysis

- [62] For the purposes of this case, this court adopts the approach outlined by Barrow JA. in the **McIntyre Paul** case. Dr. Crawford’s claim started out as a public law claim. Carter J. altered the nature of the claim when Her Ladyship quashed the decision to suspend him and ordered that he was entitled to damages to be assessed. On the public law claim, he would not be entitled to damages for unlawful administrative action. In his application for assessment of damages, the opportunity afforded by the learned judge, Dr. Crawford gave details of the conduct of the PSC on which he relies to make a case for the award of exemplary damages. I am satisfied, therefore,

that the claim for exemplary damages is properly made in the application for assessment of damages.

[63] On the argument that the PSC did not act highhandedly but acted in the public interest by recommending Dr. Crawford's suspension, I refer to and adopt the assertion of Carter J. at paragraph 26 of the judgment when Her Ladyship stated:

“There is no discretion in the PSC to make a recommendation without having regard to a public officer's representations.”

[64] The PSC failed to carry out its own investigation or inquiry, giving Dr. Crawford an opportunity to be heard. It cannot use the public interest factor to demonstrate the absence of highhandedness.

[65] After Dr. Crawford was unlawfully suspended, in a letter copied to the PSC, the unlawful nature of the suspension was highlighted. However, the PSC did nothing to address the breach, forcing Dr. Crawford to seek redress in the court.

[66] In my view, this conduct of the PSC in depriving Dr. Crawford in making representations on the basis of a discretion it had no authority to exercise, coupled with the refusal to put matters right, can certainly be characterised as highhanded. Therefore, on this limb of the argument, I find that this is a fit and proper case for the award of exemplary damages. In all the circumstances of this case, an appropriate amount to award under this head is \$20,000.00.

Vindictory damages

[67] Under this head, Dr. Crawford seeks \$50,000.00 as was awarded by the Privy Council in **Inniss v The Attorney General of Saint Christopher and Nevis**.¹² As stated by Lord Hope at paragraph 27 of the judgment:

“The purpose of the award, whether it is made to redress the contravention or as relief, is to vindicate the right. It is not to punish the Executive. But vindication involves an assertion that the right is a valuable one, as to whose enforcement the complainant herself has an interest. Any award of damages for its contravention is bound, to some extent at least, to act as a deterrent against other breaches. The fact that it may be expected to do so is something to which it is proper to have regard.”

¹² [2008] UKPC 42

[68] Mr. Joseph spelled out that Dr. Crawford held an important post in the civil service, one of the appointed OB/GYNs at the hospital. He was suspended unlawfully by the PSC and in breach of its statutory remit failing to give him an opportunity to be heard while abdicating its duty to the Medical Board. He pointed out that even after judgment vindicating Dr. Crawford's right to natural justice, the PSC, as at the date of this application and these proceedings, has failed and/or refused to reinstate him, again appearing to be guided by the Medical Board.

[69] Vindictory damages are usually awarded in constitutional claims. Nevertheless, Mr. Joseph directed the court's attention to cases which do not involve actual constitutional issues or breaches of constitutional rights, but have a "constitutional element". In **The Prime Minister and Samuel v Sir Gerald Watt**,¹³ which dealt with an application for judicial review, and where there was no allegation of a breach of any constitutional right, the Court of Appeal held the right violated was in the nature of a constitutional right, although it was not entrenched in the constitution. Sir Gerald had been summarily dismissed from a statutorily entrenched position as the Prime Minister had lost confidence in his performance. Mitchell JA. (Ag.) was of the view that the principles established in **Inniss** were equally applicable in a public law case of that kind, and left the assessment of vindictory damages to the court below. A similar approach was taken by the court in the **Otto Sam** case. The relationship between Mr. Sam and the government was said to be "managed" by the Public Service Commission, a constitutional entity under the Constitution of St. Vincent and the Grenadines. The court found that notwithstanding that the claim was for judicial review, elements of breaches of a constitutional right featured prominently. Mr. Sam could only be removed from office in the manner prescribed by the constitution. He was removed by an authority other than the commission which was a patent violation of the constitution. Mr. Sam was awarded \$30,000.00 in vindictory damages "to vindicate the obvious breach of the constitutional rights afforded to him".¹⁴

[70] Mr. Joseph's submission is that there is a constitutional element in this case as the High Court's description, in **Inniss**, of a wanton disregard for the rules governing the disciplinary process of public officers applies here. The learned judge found that the breach involved "a deliberate act in violation of the Constitution to achieve what the time consuming procedures of the Commission

¹³ ANUHCVP2012/0005

¹⁴ Supra at note 5, at paragraph 28 of the judgment

could not achieve”.¹⁵ Counsel proffered that the same principles apply in this case. Not only did the PSC breach its statutory remit, the breach was clothed in the erroneous assumption that the Medical Board had undertaken disciplinary proceedings against Dr. Crawford.

- [71] The submission of the PSC on this issue is that the learned judge in this case made no finding in relation to the breach of any constitutional provisions. The question before the judge was whether there had been a breach of section 32(2) of the Public Service Act. The learned Solicitor General insisted that Dr. Crawford in this application for assessment of damages is attempting to litigate new issues such as the PSC’s abdication of its remit to the Medical Board and its failure to hold a hearing. She pointed out that the learned judge made no such findings in relation to those matters. Therefore, the contention of the PSC is that no award of vindictory damages should be made in this case.
- [72] Notwithstanding this stance, in oral submissions, Mrs. Bullen Thompson indicated that in judicial review proceedings, it could still be in the discretion of the court to award vindictory damages, in light of the section breached. Counsel advanced that a claimant may be awarded vindictory damages without proof of an underlying cause of action.
- [73] A qualified OB/GYN, the first son of the soil to claim that distinction, was unlawfully suspended from his government posting. The court having declared the illegality of the suspension under the Public Service Act, in November 2017, Dr. Crawford remained under suspension up to the time of the application for assessment in August 2019. Up to that time, no competent authority had made any finding in relation to purported allegations made against him.
- [74] The PSC is a body set up under the constitution of St. Kitts and Nevis and is seized with the authority to appoint, dismiss, transfer and suspend public officers, among other powers. In this sense, the case takes on a “constitutional element”. Thus, Dr. Crawford is entitled to an award under this head to vindicate his rights in relation to the breach of the law by the PSC in suspending him without affording him the opportunity to make representations. I consider the sum of \$30,000.00 to be a fair award under this head.

¹⁵ Supra at note 12, at paragraph 21 of the judgment

The award

[75] Based on the foregoing, Dr. Crawford is awarded damages as follows:

- (1) General damages in the sum of \$50, 000.00.
 - (2) Exemplary damages in the sum of \$20,000.00
 - (3) Vindictory damages in the sum of \$30,000.00
- The total award is \$100,000.00.

[76] The parties have already settled on the issue of costs.

[77] Finally, I express my gratitude to both counsel for their tremendous assistance in this matter.

Tamara Gill
Master

By the Court

Registrar