

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2016/0015

BETWEEN:

GEORGE RICK JAMES

Appellant

and

[1] HON. GASTON BROWNE

(Prime Minister of Antigua and Barbuda)

[2] HON. STEADROY BENJAMIN

(Attorney General of Antigua and Barbuda)

Respondents

Before:

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Sydney Bennett, QC

Justice of Appeal [Ag.]

Appearances:

Mr. Ralph Francis for the Appellant

Ms. Alicia Aska for the Respondent

2018: November 27;

2020: October 13.

Civil appeal — Constitutional motion — Sections 69(3) and 70 of Constitution of Antigua and Barbuda Order, 1981 — Composition of Cabinet — Whether Prime Minister breached sections 69(3) and 70 of Constitution by appointing a Cabinet comprised of a majority of elected members in House of Representatives — Collective responsibility — Whether collective responsibility provision breached by composition of Cabinet

On 12th June 2014, following general elections in Antigua and Barbuda, the Antigua and Barbuda Labour Party led by the first respondent, The Honourable Gaston Browne, won fourteen of the seventeen seats in the House of Representatives, with the remaining three seats being won by the United Progressive Party. Mr. Browne was duly appointed to hold the office of Prime Minister, and the second respondent, the Honourable Steadroy

Benjamin, was appointed Attorney General and Minister of Legal Affairs. Mr. Browne appointed eleven of the other elected members to the House of Representatives to be Ministers of the Government and members of his Cabinet, with the result that the Cabinet was comprised of thirteen of the seventeen members of the House of Representatives.

The appellant, Mr. George Rick James, filed a claim in the High Court against Messrs. Browne and Benjamin in their respective capacities seeking declarations to the effect that, by his appointment of eleven elected members of the House of Representatives to Cabinet, Mr. Browne acted in breach of sections 69(3) and 70 of the Constitution of Antigua and Barbuda Order, 1981. Mr. James' argument was that where a majority of the House of Representatives is appointed to the Cabinet, the Executive arm of government has control over Parliament and not the other way around, as contemplated by the constitutional doctrine of collective responsibility and sections 69(3) and 70 of the Constitution.

The matter was heard by Clare Henry J who, by judgment dated 22nd July 2016, refused to grant the declarations sought. Mr. James appealed. The main issue before the Court of Appeal was whether Mr. Browne acted in breach of sections 69(3) and 70 of the Constitution by appointing a majority of the House of Representatives to Cabinet.

Held: dismissing the appeal with no order as to costs, that:

1. The Constitution expressly provides for the Governor General to establish offices of Minister of Government and to appoint to such offices persons nominated by the Prime Minister from the members of the House of Representatives and/or the Senate. The Constitution further provides for the establishment of a Cabinet from among the Ministers so appointed, and gives the Prime Minister and not the courts the power to determine the composition of Cabinet and the number of Cabinet members. Outside the express provisions of the Constitution, there are no legal restrictions as to the number or qualifications of the members of the Cabinet.

Sections 69(3) and (4), and 70(2) of **the Constitution of Antigua and Barbuda Order, 1981** Cap. 23 of the Revised Laws of Antigua, 1992 applied.

2. Notwithstanding their familiarity with the doctrine of collective responsibility, the framers of the Constitution put in place clear arrangements for the establishment of the offices of Ministers of Government, for the appointment of parliamentarians to such offices by the Governor General on the advice of the Prime Minister, and for the formation of the Cabinet and the pre-eminent role of the Prime Minister in that regard. It is not the function of the courts to usurp the discretion expressly given to the Prime Minister by the Constitution to determine the number of ministers in the Cabinet, and it is decidedly not the function of the courts to do so with a view to altering or affecting the balance between the legislative and the executive branches of government.

Sections 70(1) of **the Constitution of Antigua and Barbuda Order, 1981** Cap. 23 of the Revised Laws of Antigua, 1992 applied.

3. No award was made as to costs by the trial judge. In this case, the appellant has not acted unreasonably in prosecuting his claim or the appeal. Accordingly, no order for costs should be made against him.

Rule 56.13(6) of the **Civil Procedure Rules 2000** applied.

JUDGMENT

- [1] **BENNETT JA [AG.]:** This appeal is against the decision of Clare Henry J dated 22nd July 2016 refusing the appellant's claim for declarations that the first respondent had acted in breach of sections 69(3) and 70 of the **Constitution of Antigua and Barbuda Order, 1981**¹ ("the Constitution") by appointing a Cabinet of a size which permitted the Cabinet members to control the proceedings of the legislative branch of government.

Background

- [2] The appellant George Rick James, now deceased, brought the instant proceedings during his tenure as Secretary of The Free and Fair Election League Inc. ("FFEL"). The FFEL is a non-profit organization incorporated under the laws of Antigua and Barbuda. The first respondent is the Prime Minister of Antigua and Barbuda and leader of the Antigua and Barbuda Labour Party. The second respondent is the Attorney General of Antigua and Barbuda.
- [3] The proceedings arise out of the following circumstances. On 12th June 2014, there was a general election in Antigua and Barbuda. The outcome was that the Antigua and Barbuda Labour Party, led by the first respondent, won fourteen of the seventeen seats in the House of Representatives ("the House"), with the remaining three seats being won by the United Progressive Party. The first respondent was duly appointed to hold the office of Prime Minister. The second respondent was appointed as Attorney General and Minister of Legal Affairs. On 16th June 2014, the first respondent appointed eleven of the other elected members to the House of Representatives to be Ministers of the Government and members of his

¹ Cap. 23 of the Revised Laws of Antigua, 1992.

Cabinet, with the result that the Cabinet was comprised of thirteen of the seventeen members of the House of Representatives.

- [4] The appellant (who was the claimant below), on 8th December 2014, filed a claim in the High Court alleging that, by appointing eleven of the elected members of the House to serve in his Cabinet, the first respondent exceeded his authority under Section 69(3) of the Constitution.
- [5] It was argued that section 70(1) of the Constitution, which provides that 'there shall be a Cabinet... which shall have the general direction and control of the Government and shall be collectively responsible therefor to Parliament', directly impacts the number of persons who may be appointed as Cabinet members. That section, it was urged, involves the concept that it is for Parliament to control and supervise the Executive. If however a majority of the House of Representatives is appointed to the Cabinet, it will be the Executive which will control Parliament and not the other way around. On that premise, it was submitted that the Prime Minister is constrained in the number of persons that he may appoint to the Cabinet and that he is so constrained notwithstanding the express terms of section 70(2) of the Constitution which provides for the Cabinet to be composed of the Prime Minister and '...such number of other Ministers (of whom one shall be the Attorney-General), as the Prime Minister may consider appropriate'. This provision, it was urged, was subject to the requirement in section 70(1) that the Cabinet so appointed '...shall be collectively responsible... to Parliament'.
- [6] In summary, the appellant argued that because all but four members of the seventeen-member House of Representatives were members of the Cabinet and have collective responsibility, the Cabinet has supremacy over Parliament. On this basis it was urged that the first respondent had, by the actions complained of, violated sections 70(1) and 69(3) of the Constitution. Section 69(3) empowers Parliament to establish offices of Minister (including Minister of State) of the Government, and for those offices to be filled by the Parliament; or subject to the

provisions of a law enacted by Parliament for that purpose, for those offices to be established by the Governor General and filled by the Governor General acting in accordance with the advice of the Prime Minister. The alleged breach of the section was apparently the advice given by the first respondent to the Governor General for the appointment of eleven Ministers of the Government.

[7] By judgment delivered on 22nd July 2016, Clare Henry J refused to grant the declarations sought. In coming to her decision, the learned judge reasoned:

- (i) Antigua and Barbuda has adopted the Westminster model of government which provides for three distinct branches of government: the Legislature, the Executive and the Judiciary.²
- (ii) Section 27 of the Constitution establishes the Parliament and provides that it shall consist of Her Majesty, a Senate and a House of Representatives. Parliament does not refer to the two houses of Parliament individually, for neither house has the authority to legislate on its own. Approval of a Bill normally requires the approval of the Senate and the House and the assent of the Governor General on behalf of Her Majesty.³
- (iii) Section 70(1) of the Constitution provides for a Cabinet which can only consist of Government Ministers who are either Senators or members of the House. The section prescribes no maximum number of Cabinet members and leaves to the discretion of the Prime Minister the number of Ministers in his Cabinet.⁴
- (iv) Section 70(1) places the general direction and control of the Government under the purview of the Cabinet and having done so, further provides

² See paragraph 13 of the learned judge's judgment.

³ See paragraphs 14 and 28.

⁴ See paragraph 18.

that Cabinet 'shall be collectively responsible [for the general direction and control of the Government] to Parliament'.⁵

- (v) Ministerial accountability does not require any numerical equation for the Cabinet to operate in accordance with section 70(1).⁶
- (vi) Counsel for the claimant endorsed the views expressed by C.O.R. Phillips, QC in his Essay 'The Rape of the Constitution', where he pointed out that a Minister who is a member of Cabinet is bound by the doctrine of collective responsibility not to reveal to the public what position he took during the discussion of any Cabinet decision, concluded that the House is 'hamstrung' being comprised mainly of Ministers who are unable to voice their real opinion on any measure brought before Parliament and complained that that the Cabinet has been elevated to a position of ascendancy and control over the House.⁷
- (vii) The framers of the Constitution were fully aware of the doctrine of collective responsibility. It dates back to at least the early 19th century. Yet, the framers of the Constitution chose to put in place a system of government where (a) Cabinet members are chosen from among the members of Parliament; (b) there is an absence of any prescribed maximum number for the size of the Cabinet; and (c) it is expressly directed that the Cabinet consist of such number of other Ministers 'as the Prime Minister may consider appropriate'.⁸
- (viii) On the record before the court, the claimant (appellant) has not shown that the first defendant (first respondent) has violated section 70(1) or section 69(3) of the Constitution.⁹

⁵ See paragraph 17.

⁶ See paragraph 25.

⁷ See paragraph 27.

⁸ See paragraph 28.

⁹ See paragraph 29.

The appeal

- [8] The appeal is brought on two grounds. Firstly, the appellant complains that the learned judge erred in rejecting the proposition that 'collective responsibility to Parliament' in the context of section 70(1) of the Constitution refers, in practical terms, to collective responsibility of the Cabinet to the seventeen-member House of Representatives.
- [9] I agree with this submission. True it is that, as provided in section 27 of the Constitution, Parliament consists of '...Her Majesty, a Senate and a House of Representatives'. The reality is however that collective responsibility of Cabinet to Parliament is assured only by the convention that the Government of the day must collectively resign if its policy is rejected by its defeat on matters of substantive importance and/or which reflect a lack of confidence in its policies.
- [10] This is however beside the point. The issue of underlying importance in this appeal is whether it has been shown that the first respondent has, by appointing eleven members of the House of Representatives to Cabinet, breached the provisions of section 70(1) or section 69(3) of the Constitution. I entertain no doubt that he has not.

Discussion and Conclusion

- [11] Save for the matter outlined above, I would dismiss the appeal, basically for the reasons given by the learned judge. Section 69(3) of the Constitution provides:

"Subject to the provision of section 82 of this Constitution and subsection (4) of this section there shall be, in addition to the office of Prime Minister, such other offices of Minister (including Minister of State) of the Government as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister."

There being no other legislation on the subject, the effect of this provision is to mandate that the offices of Minister of the Government shall, in addition to the office of Prime Minister, be the office of Attorney General and such other offices of Minister (including Minister of State) of the Government as may be established by

Parliament, or the Governor General acting in accordance with the advice of the Prime Minister.

[12] By section 69(4) of the Constitution, the Ministers of Government other than the Prime Minister 'shall be such persons as the Governor General, acting in accordance with the advice of the Prime Minister, shall appoint from among the members of the House and of the Senate'. By section 70(2), the Cabinet shall consist of the Prime Minister, the Attorney General and 'such number of other Ministers... as the Prime Minister may consider appropriate'. Thus, the Constitution expressly provides for the Governor General to:

- (i) establish such offices of Minister of Government as the Prime Minister may advise; and
- (ii) appoint to such offices the persons nominated by the Prime Minister from the members of the House and/or Senate.

[13] The Constitution further provides for the establishment of a Cabinet from among the Ministers so appointed, and (other than for the office of Attorney General) leaves to the Prime Minister and not to the courts the power to determine the composition of the Cabinet and the number of Cabinet members. Save as set out above, there are no legal restrictions as to the number or qualifications of the members of the Cabinet, its procedures or practices. Traditionally, these matters lay in the field of convention. Conventions on one view are no more than generally accepted political practices with a record of successful application or precedent. They are rules of structure, procedure or principle, established by precedent, consolidated by usage and generally observed by all concerned but which are generally not justiciable in the courts.

[14] Section 70(1) of the Constitution provides that Cabinet 'shall have the general direction and control of the Government and shall be collectively responsible therefor to Parliament'. This provision sets out the principle of the accountability of the Executive (i.e. the Cabinet) to the people's representatives in the Parliament

and, through them, to the people themselves. In my view, the primary implication of this provision is the accepted obligation on the Government to resign where it loses a vote in the House of Representatives on an issue of confidence.

- [15] The doctrine of collective responsibility is codified in the Constitution only to the extent of the broad statement in section 70(1) above. The practical effect and main implications of the doctrine are, firstly, and as stated above, that by convention a government which loses a vote in the House of Representatives on an issue of 'confidence' must collectively resign, and secondly, that an individual Minister who publicly dissents from government policy is expected to resign, or may be dismissed. This envisages political consequences rather than judicial sanction with regard to such matters.
- [16] The appellant complains that, as a result of the comparative size of the Cabinet and the operation of the doctrine of collective responsibility, the Cabinet has been elevated to a position of ascendancy and control over the House. I do not overlook the modern reality of a dominant executive entrenched by party discipline and institutionalized advantages in the procedures of Parliament. It is important however to understand that the aim of the doctrine of collective responsibility is to bolster the efficacy and authority of the Executive rather than seeking to contain its power. It requires the individual members of the Government to collectively take responsibility for, and collectively endorse, the decisions and policies of the Government, irrespective of their individual opinions and disagreements. This political convention allows the Government to face the legislature and public as one, the embodiment of both the efficacy and singularity of the Executive power of the State. The alternative is a scenario in which the responsibility of the Government would be diminished, and its policies fragmented since individual members could casually acquiesce in decisions from which they are free to dissociate themselves publicly.

[17] As pointed out by the learned judge, not only were the framers of the Constitution familiar with the doctrine of collective responsibility and of its effect in enhancing the power and authority of the Executive, they have enshrined it in section 70(1) of the Constitution. Notwithstanding their familiarity with this doctrine, they put in place the before mentioned arrangements for the establishment of the offices of Ministers of Government; for the appointment of parliamentarians to such offices by the Governor General on the advice of the Prime Minister; and for the formation of the Cabinet and the pre-eminent role of the Prime Minister in that regard.

[18] In my view it is not the function of the courts to usurp the discretion expressly given to the Prime Minister by the Constitution to determine the number of Ministers in his Cabinet, and it is decidedly not the function of the courts to do so with a view to altering or affecting the balance between the legislative and the executive branches of government.

Costs

[19] No award was made as to costs by the trial judge. In my view, the appellant has not acted unreasonably in prosecuting his claim or the appeal. Accordingly, and consonant with rule 56.13(6) of the **Civil Procedure Rules 2000**, no order for costs should be made against him.

Conclusion

[20] I would order that the appeal is accordingly dismissed, with no order as to costs.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar