

**IN THE SUPREME COURT GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

IN THE HIGH COURT OF JUSTICE (CIVIL)

CLAIM NO. GDHCV 2014/0082

**IN THE MATTER OF SECTIONS 84(8), 85 and 101 OF THE CONSTITUTION OF
GRENADA, SCHEDULE 1 TO THE GRENADA CONSTITUTION ORDER 1973,
CHAPTER 128A OF THE CONTINUOUS REVISED LAWS OF GRENADA**

AND

**IN THE MATTER OF THE SUPREME COURT (CONSTITUTIONAL REDRESS)
GRENADA RULES 1968, SRO NO. 41 OF 1968, CHAPTER 336 OF THE
CONTINUOUS REVISED LAWS OF GRENADA**

AND

**IN THE MATTER OF THE PUBLIC SERVICE COMMISSION REGULATIONS 1969,
SRO NO. 27 OF 1969, CHAPTER 128A OF THE CONTINUOUS REVISED LAWS OF
GRENADA**

AND

**IN THE MATTER OF SECTION 63 OF THE PROCEEDS OF CRIME ACT, ACT NO. 6
OF 2012 OF THE LAWS OF GRENADA**

AND

**IN THE MATTER OF AN APPLICATION BY GEMMA BAIN-THOMAS SECRETARY
TO THE CABINET OF GRENADA, PURSUANT TO SECTION 101 OF THE
CONSTITUTION OF GRENADA FOR A DECLARATION AS TO THE
CONTRAVENTION OF SECTION 85 THEREOF AND FOR RELIEF PURSUANT TO
SECTION 84(8) OF THE SAID CONSTITUTION**

BETWEEN:

GEMMA BAIN-THOMAS
(Secretary to the Cabinet of Grenada)

Claimant

AND

1. THE ATTORNEY-GENERAL OF GRENADA
2. THE PUBLIC SERVICE COMMISSION

Defendants

APPEARANCES:

Mr. Rohan A. Phillip for the Claimant

Mr. Dwight Horsford, Solicitor General, and Ms. Francine Foster for the
Defendants

2015: March 6;
April 1.

JUDGMENT

[1] **ASTAPHAN, Q.C., J.:** The facts in this case, as set out in the affidavits filed in this matter by the Claimant, are not in dispute, the Learned Solicitor General, Mr. Dwight Horsford, having so informed the Court at the pre-trial hearing on 17th February 2015. In his words, as set out in the Defendants' Submissions filed March 2, 2015, at paragraph 3.2: "The essential factual allegations leading up to the Claimant's transfer are uncontroverted." Mr. Horsford repeated this position of the Defendants at the Hearing of this matter.

[2] I will therefore set out the salient facts as stated by the Claimant in her Affidavit filed on February 24, 2014.

THE UNCONTROVERTED FACTS

[3] The Claimant was, by letter dated October 1, 2009, appointed by the Governor-General acting in accordance with the advice of the Public Service Commission, to act in the post of Cabinet Secretary to the Cabinet of the

Executive Branch of the Government of Grenada with effect from 21st September, 2009.

- [4] The Claimant was confirmed to that post by the Governor-General acting in accordance with the advice of the Public Service Commission, as evidenced by the letter dated January 30, 2012 from the Chief Personnel Officer in the Office of the Public Service Commission.
- [5] By convention and custom, the post of Cabinet Secretary was seen as being the Head of the Grenada Public Service. In or about January 2011, the Cabinet of the Government of Grenada officially designated the post of Secretary to the Cabinet to also be Head of the Grenada Public Service.
- [6] Thus it is that on February 19, 2013 the Claimant, as substantive holder of the post of Secretary to the Cabinet, was also the official Head of the Public Service of Grenada.
- [7] On that day and date a General Election to Membership in the Grenada Parliament was held.
- [8] The results of that Election ushered in an Executive Cabinet constituted of Members of the Parliament different from those who constituted the Executive Cabinet immediately prior to these Elections.
- [9] There was now a new Prime Minister, who was the Head of the Executive Branch -- the Cabinet -- of the Government of Grenada.
- [10] At about 8:30 a.m. on February 21, 2013 the Claimant was at her office on the 6th Floor of the Ministerial Complex situated in the verdant and very beautiful Botanical Gardens in the capital City of St. George's, Grenada. Although there is no evidence before the Court on this point, I am prepared to infer that the 20th February, 2013 was a Public Holiday in Grenada, as has become customary throughout the Caribbean -- the day next succeeding a General Election being such.

- [11] The Claimant was therefore in her office to resume her duties as Cabinet Secretary and Head of the Grenada Public Service on this day when she was informed by one Mr. Hamlet Mark -- now Senior Advisor on Information to the Government of Grenada; as at that time, I have no evidence what was his vocation -- that the new Prime Minister, Dr. The Right Honourable Keith Mitchell, wished to meet with her at 1:00 p.m. on that day, together with Mrs. Ann Isaac, the then Permanent Secretary in the Ministry of National Security, Disaster Management and Home Affairs.
- [12] This meeting convened at the Prime Minister's Office at Happy Hill, St. George's.
- [13] Present at the meeting were the Honourable Prime Minister of Grenada, Ms. Nadica McIntyre, then Permanent Secretary in the Ministry of Labour, Mrs. Veda Bruno-Victor, Permanent Secretary in the Ministry of Youth and Sports, and the Claimant, Secretary to the Cabinet and Head of the Grenada Public Service.
- [14] At the meeting the Claimant presented a written Brief to the Prime Minister on current Cabinet matters, and the Minutes of the last Cabinet Meeting prior to the General Elections. All questions asked of the Claimant by the Prime Minister in relation to Cabinet matters were dutifully answered by the Claimant.
- [15] The Prime Minister then informed the Claimant that it being a new Administration, he needed to be comfortable with the persons who occupied Senior Public Office.
- [16] I have before me no direct evidence that the Prime Minister was *not* comfortable with the Claimant being in the post of Cabinet Secretary and Head of the Grenada Public Service, but I am prepared to find as a fact that in all the circumstances of this case, it can be reasonably inferred that that was the position of the Prime Minister, as subsequent events show.

- [17] The Claimant informed the Prime Minister that she respected his position and, as an option, she may be prepared to accept a suitable *assignment*.
- [18] The Prime Minister and the Claimant agreed in principle that a suitable *assignment* would be developed to accommodate the Claimant.
- [19] That same day -- I assume after the meeting with the Prime Minister, for I am not told by the evidence exactly when -- the Claimant had a telephone conversation with Mrs. Gloria Payne-Banfield, the then Chairperson of the Grenada Public Service Commission, and on the 23rd February 2013, they met in person.
- [20] At this meeting they discussed what could be considered an appropriate *assignment* in the circumstances, and Mrs. Payne-Banfield agreed to take up this matter with the Public Service Commission at its next meeting, which was scheduled to be held on February 25, 2013.
- [21] On 25th February 2013, the Prime Minister attended at the Prime Minister's Office at the Ministerial Complex, where he was greeted and welcomed by the Claimant and other Senior Managers and Staff of the Office of the Prime Minister and National Security. They held a short reception in the Cabinet Room for the new Prime Minister.
- [22] On the day next following, the Claimant was informed by Mr. Elvin Nimrod, Deputy Prime Minister, and then Attorney-General, that Ms. Nadica McIntyre would be appointed to *act* as Secretary to the Cabinet. Later that day, the Claimant received a telephone call from the said Ms. McIntyre informing her that the Prime Minister had advised her that the Claimant would be handing over to her. I have no evidence before me of what that statement means, but I can infer from the evidence that the Claimant was "hanging over" her "functions" as Cabinet Secretary, together with whatever documents were necessary for such a 'transition' of office holders, from one to the other.

- [23] The Claimant immediately requested that Ms. McIntyre attend at the office of Secretary to the Cabinet for the handing over to take place, and this occurred in a professional manner.
- [24] The Claimant was then sent on 14 working days leave "... for the purpose of giving [her] the required time for [her] preparation of proposed terms of reference for duties for [her] *agreed assignment*." This, by letter from the Chief Personnel Officer of the Government dated 26th February 2013, and with effect from 27th February, 2013. It is to be noted that the Claimant remained the substantive holder of the post of Secretary to the Cabinet and Head of the Public Service.
- [25] One week later, on 6th March, the Claimant responded to that letter and stated that "... I had agreed in principle to an *assignment*; but agreement may only be reached on this *assignment* after I had reviewed its terms of reference. I also reiterated that the terms of reference of the proposed *assignment* should be provided to me in writing rather than I being asked to prepare them."
- [26] In response to that letter the Chief Personnel Officer, on March 22, sent by email draft terms of reference for the proposed *assignment* and solicited the Claimant's comments.
- [27] The Claimant responded by letter dated April 8, 2013 pointing out various concerns which she had with the draft terms of reference.
- [28] At about 8:00 p.m. on 10th June 2013, the Chief Personnel Officer telephoned the Claimant and informed "... [her] of the decision of the Governor-General to assign [the Claimant] to perform the duties of Director, Public Sector Reform Initiatives, DPA, [I assume this means 'Department of Public Administration'], Disaster Management, Home Affairs, Information and Implementation, with effect from June 11, 2013 until further notice." The Claimant was to report to the DPA where a letter awaited her. Her status would therefore be 'Secretary to the Cabinet on *assignment* to ...' that post.

- [29] On June 12 when the Claimant reported as directed, she was handed the said letter by Ms. Nadica McIntyre. The letter informed the Claimant that she would perform the duties of “Director, Public Affairs, Information and Implementation, with effect from June 11, 2013 until further notice, and that [she] would be directly responsible to the Cabinet Member responsible for the Public Service for the proper functioning of [her] said duties.”
- [30] Shortly after meeting with Ms. McIntyre, who was then acting Secretary to the Cabinet, the Claimant met with the Prime Minister who indicated that the letter contained an error as she was in fact to be “... responsible for the entire DPA. [The Claimant] was asked by the Honourable Prime Minister to assume full responsibility for the DPA and to prepare draft terms of reference for an *assignment* that will include that posting and that the amendment would be made to the letter issued to...” her. I pause to note that there is no dispute that it is within the powers of the Prime Minister to *assign* the Secretary of the Cabinet of Grenada to other responsibilities.
- [31] The Claimant was then, at the request of the Prime Minister, escorted to the DPA by Ms. McIntyre who introduced her to the staff as being “...responsible for DPA.”
- [32] The Claimant assumed full responsibility for DPA and, in keeping with the request of the Prime Minister “... prepared draft terms of reference for an *assignment* as Secretary to the Cabinet on *assignment* with responsibility for Public Administration and Public Sector Modernization.” [Italics supplied] The Claimant avers that this draft Terms of Reference was handed to the Prime Minister in or about the third week of June 2013.
- [33] When, three months later, in early October, the Claimant had still not received the amended appointment letter, or any response to the draft Terms of Reference which she had submitted to the Prime Minister, the Claimant requested an audience with the Chairperson of the Public Service Commission. Having been granted that audience, the Claimant informed the Chairperson of her concerns with the letter of 10th June 2013 and the

accompanying Job Description for the Post of Director, Public Reform Initiatives.

- [34] The Claimant states in her evidence that the Chairperson promised to raise the matter with the Public Service Commission, but that as at 24th February 2014, the date on which the Claimant swore her Affidavit in this matter, she had received no response from the Public Service Commission, and the letter of 10th June 2013 remained unchanged.
- [35] The Claimant wrote a letter dated 23rd October 2013 to the Chief Personnel Officer “advising” that Officer that the purported *assignment* of her [Claimant] was in fact a transfer to the Post of Director of Public Reform Initiatives.
- [36] This post was graded M like that of Secretary to the Cabinet, wrote the Claimant, “... but a review of the duties reveals that the post of Director of Public Sector Reform Initiatives is lower than that of a Permanent Secretary and that of the post of Head of Reform Management Unit in the DPA. [She] also pointed out that all other positions of Director in the Public Service of Grenada were in the Grade K. [The Claimant then] requested the PSC to apply the necessary remedy to [her] case, but [she has] received no response to [her] letter to the CPO.”
- [37] There occurred on November 5, 2013 an event which is informative. The Claimant avers that after a Management Team Meeting with the Prime Minister, he held a short meeting with her.
- [38] At that short meeting, the Prime Minister informed the Claimant that he had received a report that the Claimant was leaking information from Management Team Meetings, and he was therefore recommending that she no longer attend such meetings. The Prime Minister informed the Claimant that there was “no smoking gun”. Further, no evidence was provided to substantiate that allegation.

- [39] The Prime Minister suggested that the Claimant proceed on study leave in light of the fact that she was taking a programme at St. George's University. The Claimant informed the Prime Minister that under existing study leave Policy, and the [Public Service, I presume] Union Agreement, she was not eligible for a grant of study leave. The Prime Minister indicated to the Claimant that he would discuss the issue with the Attorney General.
- [40] The Claimant denied that she had leaked any information, and indicated that the situation was an uncomfortable one and she suggested that "... maybe we should just sever ties." She informed that Prime Minister that "... in light of this development [she] was going to apply for some vacation leave."
- [41] The Claimant concluded from all of the foregoing undisputed facts, that "... there was an apparent lack of trust and confidence in me by the Honourable Prime Minister and as such this made it impractical, if not impossible, for me to perform the assigned duties." This Court finds that that conclusion is reasonably warranted on a clear and objective analysis of the foregoing uncontroverted facts.
- [42] The Claimant went on leave.
- [43] During that leave, on or about November 15, 2013, the Claimant received a telephone call from Ms. McIntyre inquiring, on the stated behalf of the Prime Minister, about the Claimant's application for study leave. On that question Ms. McIntyre was referred to the Attorney General by the Claimant.
- [44] The Claimant however told Ms. McIntyre that "... what we should be considering is the severing of ties because I do not have time for that nonsense." The Claimant had by this time apparently become impatient which, in light of the evidence, is understandable.
- [45] Ms. McIntyre promised the Claimant that she would speak to the Prime Minister and the Attorney General and revert to her.

- [46] The Claimant has not heard from Ms. McIntyre since then.
- [47] On November 22, 2013 the Claimant received a telephone call informing her that the Public Service Commission had directed that she should utilize the thirteen (13) working days of vacation which she had accumulated in excess of her maximum leave eligibility. Pursuant to said direction, the Claimant applied for that leave with effect from November 26, 2013. The Claimant left the Leave Application Forms with the Chief Personnel Officer.
- [48] By letter dated December 6, 2013 the Claimant wrote to the Chief Personnel Officer advising that she had complied with the Public Service Commission's directive, and reminded the Chief Personnel Officer of her substantive matter which was before the Commission – the issue of her "assignment".
- [49] The Claimant further informed the Chief Personnel Officer of her intention to retain Legal Counsel, and of her intention to seek a judicial resolution to her problem if no response was forthcoming from the Public Service Commission.
- [50] The Claimant remained on leave -- subsequently extended by Medical leave -- and on 27th December 2013, she telephoned the Office of the Public Service Commission to inquire as to her status in the Public Service of Grenada.
- [51] She was informed by the Chief Personnel Officer that the Public Service Commission had requested an audience with her on January 6, 2014.
- [52] By letter dated January 2, 2014, the Claimant confirmed that she would attend the requested audience, and placed on record the length of time it was taking to have her 'situation' addressed.
- [53] The Claimant in that letter "... also requested that pending the audience with the PSC and to enable the decision-making process to proceed without any unnecessary disruptions, that I be granted administrative leave."

- [54] There is no evidence before me that there was a reply to that letter; perhaps because the 'audience' was scheduled to take place within four days of the letter, or perhaps because there was a paucity of replies to the Claimant's earlier correspondence.
- [55] That meeting took place and the Claimant's status was discussed. The Claimant suggested to the Public Service Commission that, in the circumstances, as are set out in the foregoing paragraphs of this Judgment, that "... I was therefore expecting the PSC to apply the constitutional provisions to my case. On conclusion of the audience [she] was informed by the PSC that they will (sic) get back to me in 2 weeks."
- [56] On or about January 8, the Claimant inquired of the Chief Personnel Officer whether she was granted the requested leave, and she was informed that the Commission had agreed to grant her two weeks leave, but the request was to be forwarded to the Governor-General, following which, the Claimant would receive an official letter. Clearly, one would expect that the "official letter" from the Governor – General would address the requested leave.
- [57] The near one-year anniversary of the commencement of this saga passed quietly. It was unheralded -- at least from the point of view of the Government and the Commission. But the Claimant having not received any follow-up from either the Commission, or as indicated by the Chief Personnel Officer was to happen, from the Governor-General, she instructed her Counsel to seek Legal redress.
- [58] The Claimant's Legal Counsel on January 27 wrote a letter to the Chief Personnel Officer, copied to the Attorney General, setting out a synopsis of the history of the Claimant's saga which began on 21st February the year before, and requested that "... an appropriate response be provided as to [her] status within the Public Service of Grenada.
- [59] The Claimant in her evidence states that a reply to that letter was received from the Attorney General by letter dated 29th January 2014, in which "... he

pithily indicated that I am liable to be transferred and or assigned to another post or function of equivalent grade.”

[60] I set out the letter of the Attorney General -- exhibited to the Claimant's Affidavit of 24th February, 2014 -- in full and faithful detail:

“January 29, 2014

Mr. Rohan Phillip
Attorney-at-Law
Lex Fidelis Chambers
Upper Church Street
ST. GEORGE'S

Dear Sir,

Re: Mrs. Gemma Bain-Thomas

1. With reference to your letter dated the January 27, 2014 resting with the Chief Personnel Officer regarding the subject under reference, I am obliged to advise as shall now follow. [Note: “the January” is in the original]
2. The contents of your correspondence are duly noted.
3. Your Client entered into the performance of the duties of the post of Secretary to the Cabinet in pursuance of letters emanating from the Chief Personnel Officer dated the September 21, 2009 and January 3, 2012 respectively. [Note: “the September” is in the original]
4. One of the conditionalities of service in the performance of the functions of that post adumbrated in letter of the January 3, 2012 was that your client would be liable to transfer to any post of equivalent grade within the service. [Note: “the January” is in the original] [Note: the word “conditionalities” is in the original]
5. In the premises, your Client is liable to be transferred and/or assigned to another post or function of equivalent grade.
6. I trust that your Client will be guided accordingly.

Sincerely

(Signature)

.....

Anthony C. K. Hood

ATTORNEY GENERAL”

[61] One week later, on 6th February, at about 5:30 p.m., the Claimant, who was at her home, had some letters served upon her by a Police Officer named Joseph.

[62] This was after she had written a letter dated 4th February 2014 to the Chief Personnel Officer requesting permission to travel to Anguilla -- an Island renowned for its World Class Resorts and Villas; its internationally acclaimed Golf Course; its superb cuisine; its 35 sparkling white-sand beaches and translucent turquoise waters -- for the purpose of attending a Directors Education and Accreditation Programme on behalf of the Grenada Public Service Cooperative Credit Union, of which the Claimant was a Member of the Board of Directors.

[63] None of the letters which Officer Joseph delivered to the Claimant on that evening addressed that request.

[64] The Claimant avers that the letters were addressed to her in her personal capacity; not to her in her official Public Officer capacity, "... as is customary in the Public Service of Grenada. "This", she says, "has also been the case with correspondence addressed to me by the Cabinet Office in the months of March and April, 2013."

[65] At this point I will quote paragraphs 40, 41, 42 and 43 of the Claimant's said Affidavit:

[66] *"40. The first letter which was dated February 6, 2014 was from the Personal Assistant to Her Excellency the Governor-General. It stated that Her Excellency the Governor-General acting in accordance with the advice of the*

PSC was pleased to transfer me with effect from February 17, 2014 “to hold another post in the Public Service of Grenada in Grade M to be determined by the PSC.” [Emphasis added]

[67] “41. The other two letters also dated February 6, 2014 were from the CPO -- one letter granted me administrative leave from December 27, 2013 to February 14, 2014; while the other letter stated inter alia that the PSC appointed me to the post of Executive Director of Anti-Money Laundering and Counter [Combating] Terrorism Financing Commission (AML/CTFC), Ministry of Legal Affairs with effect from February 17, 2014 ...”

[68] “42. The letter purporting to appoint me to the post of Executive Director of AML/CTFC stated that it cancelled and superseded one letter of January 30, 2014 which in turn cancelled and superseded one of January 27, 2014 which itself cancelled and superseded another of January 21, 2014; but these [cancelled and superseded] letters were not received by me until after the February 6, 2014 letter ...”

[69] “43. It is apparent from the said letters mentioned in paragraph 42 above that the PSC had taken a decision to approve my appointment to the post of Executive Director of AML/CTFC even before Her Excellency the Governor-General had transferred me by letter dated February 6, 2014, from her Personal Assistant, “to hold another post in the Public Service in Grade M to be determined by the PSC”.”

[70] Claimant’s Counsel wrote to the Chief Personnel Officer by letter dated February 14, 2014 challenging the Constitutionality of the “... purported transfer and appointment to the post of Executive Director of AML/CTFC, Ministry of Legal Affairs, and stating that the Claimant did “... not accept being transferred [to that post] but [would] report to work as directed on February 17, 2014 under protest, pending determination of [her] said legal proceedings.”

[71] Apparently the deluge of letter writing was not over because “On Friday, February 21, 2014 -- [exactly one year to the day when the Claimant was first

told by the Prime Minister of his need to be “comfortable”] -- *at or about 12:00 noon, the Honourable Attorney General provided [the Claimant] with a new letter of purported appointment dated February 20, 2014 from CPO, which states that it cancels and supersedes her letter dated February 6, 2014; and a job description for the post of Executive Director of AML/CTFC.*” [Paragraph 47 of said Affidavit].

[72] The substantive difference between the letter of February 6 and this one of February 20, 2014 is contained in paragraph (d), where the Claimant was now responsible directly to the Attorney General for the proper performance of her duties, whereas in the prior letters she was to be so “... directly responsible to the Anti-Money Laundering and Counter Terrorism Financing Commission, [AML/CTFC] through its Chairman ...” [letter of February 6]; again “... to the [AML/CTFC] through its Chairman, in the letter of January 30th; then “...to the Attorney General, Ministry of Legal Affairs...” [27th January 2014 letter]; and again to the Attorney General in the 21st January 2014 letter.

[73] So that the responsibility “chain of command” went from the Attorney General [January 21 letter]; to the Attorney General [January 27 letter]; to the AML/CTFC through its Chairman [January 30 letter]; to AMLAC through its Chairman [February 6, letter] and then back to the Attorney General in the February 20 letter.

[74] The Claimant at paragraph 53 of her evidence states that “... *the post of Executive Director of AML/CTFC, which is established under the Ministry of Finance and not the Ministry of Legal Affairs, is not a post in the Public Service of Grenada of an equivalent status to that of the Secretary to the Cabinet of Grenada for the following reasons:*

“(1) *The office or post of Secretary to the Cabinet, which is a particular office, and appointment thereto are provided for in the Constitution by entrenched and heavily entrenched provisions respectively. On the other hand the post of Executive Director of AML/CTFC is provided for by section 63 of the Proceeds of Crime Act, No. 6 of 2012, which may be amended by an ordinary Act of Parliament.*

- (2) *Appointment and removal from the office of Secretary to the Cabinet may only be done by the Governor General acting upon the advice of the PSC, while in respect of the Secretary to (sic) Executive Director of AML/CTFC the appointment and removal is by the PSC [acting alone].*
- (3) *The holder of office of the Secretary to the Cabinet is an Accounting Officer, Head of the Public Service and the Chairperson of the Senior Managers Board; while the office holder of the Executive Director of AML/CTFC is not."*

[75] The Claimant avers at paragraphs 56 and 57 the following: At paragraph [56]: That She has had to live with the uncertainty of her job status from February 21, 2013; that she remained on administrative leave from February 27 to June 11, 2013, and again from December 27, 2013 to February 14, 2014, "... thereby being deprived of my constitutional rights to work."; that the long periods of leave have led her to lingering doubts and concerns of her continued employment in the Public Service where she worked for thirty years, and the distinct possibility of having to job seek for new employment; *"I have had some very sobering moments particularly due to lack of communication from the PSC and correspondence received addressed to me in my private capacity. This was further aggravated as I was made the subject of negative discussions and allegations of involvement in politics."*

[76] At paragraph [57]: That *"The allegation by the Prime Minister of leaking information from his Management Team Meeting has damaged my reputation and caused great pain and suffering. The recommendation that I do not attend Management Team Meetings has been demoralising. On numerous occasions I have had to defend my reputation amidst regular conversations pertaining to what had actually happened. My family (husband and daughter) have also been forced to cope with these allegations. My Public Service career and reputation as a Senior Public Officer has (sic) been called into question and I have been portrayed as an untrustworthy Senior Public Officer."*

- [77] The above constitute the Facts of this case as pleaded by the Claimant and which the Learned Solicitor General said are “uncontroverted”.
- [78] If they are not controverted, I must take them to be accepted and admitted by the Defendants.
- [79] And if they are so accepted and admitted by the Defendants, I find them to be the proven Facts in this case.
- [80] At this point, I must remind Counsel for both parties that what ‘factual assertions’ are contained in their respective written, and in the case of the Claimant, additional oral submissions, do not constitute ‘facts’ in this case unless they are to be found within the four walls of the uncontroverted affidavit evidence of the Claimant.
- [81] Where such assertions are contained in the submissions but are not in the Affidavit evidence, I am obliged to cast the Judicial eye in another direction, lest I am blinded to the pathway to Justice by their novel brilliance.

ISSUES OF LAW AND LEGAL SUBMISSIONS

- [82] The issues of Law in this case were succinctly put by the Learned Solicitor General, Mr. Dwight Horsford, at paragraph 4.0 of the Defendants Submissions thusly:
- (i) “Whether the Claimant was lawfully removed from the position of Secretary to the Cabinet and appointed to the position of Executive Director of the Anti-Money Laundering and Counter-Terrorism Financing Commission (AML/CTFC), Ministry of Legal Affairs and,
 - (ii) If not, whether the motion presents an arguable breach of section 84(8) [of the Constitution of Grenada] entitlements.”
- [83] The Claimant’s submission is that the transfer from the post of Cabinet Secretary to that of Executive Director was unconstitutional, in that it breached

the protection given to Public Officers of her status who have been appointed to what are called 'Particular offices' in Section 85 (1) of the Constitution.

[84] This, she says, is so for the following reasons:

- (i) Her appointment to the post of Executive Director, and her removal from the post of Cabinet Secretary were bad on its face because the Governor General's letter of transfer and appointment dated February 6, 2013 said, "I am directed to inform you that Her Excellency the Governor General, acting in accordance with the advice of the Public Service Commission, is pleased to transfer you, with effect from 17th February 2014, *to hold another post in the Public Service in Grade M to be determined by the Public Service Commission.*" [Italics added].
- (ii) This, says the Claimant, is an abdication of the Constitutional responsibilities of the Governor General under Section 85(2) which states, so far as is relevant, that "(2) *Subject to the provisions of section 91 of this Constitution [which are of no moment in this case] the power to appoint persons to hold or act in offices to which this section applies ... including the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:...*", the Governor-General did not appoint the Claimant to *any office* in the instrument of appointment, but left it up to the PSC to determine which office the Claimant would be appointed to, provided it was to an office in the Grade M.
- (iii) I pause to say that it is common ground that the Claimant held a 'particular office' as is defined by Section 85 (1) of the Constitution, so that section 85 (2) applies to her case.
- (iv) The Defendants say that, even though the Governor-General did not indicate the office to which the Claimant was being transferred, the fact that (a) she stated that she was acting upon the advice of the PSC, (b) she confined the office to which the Claimant was being transferred to one in Grade M, and (c) that there was a letter of appointment issued by the Public Service Commission of even date with the Governor-General's letter of appointment, which "appointed"

the Claimant to the post of Executive Director at Grade M, conjointly conform with the Section 85 (2) Constitutional requirements.

- (v) Further, says the Defendants, the fact that the appointment to Executive Director was one which could be done by the Public Service Commission acting alone, it would also not be a demotion by virtue thereof, on the basis of the Court of Appeal of the Eastern Caribbean States in Civil Appeal No. 16 of 1997 **FELIX DA SILVA and the ATTORNEY GENERAL OF ST.VINCENT & THE GRENADINES et al.**, and that the appointment would therefore be a good and Constitutional appointment.
- (vi) The Claimant says that, in any event, the transfer from the post of Cabinet Secretary to that of Executive Director is a transfer from one post to another post which is not equivalent, and/or is therefore a demotion, neither of which is permitted in the circumstances of this case.
- (vii) The Defendant submits that by virtue of the Claimant being kept in Grade M, it is not a demotion, nor is it a transfer to an office which is not equivalent to that of Cabinet Secretary.
- (viii) Further, submits the Claimant, the fact that the post of Executive Director is appointable only by the PSC, and not by the Governor-General acting upon the advice of the PSC, renders the appointment in contravention of Section 85 (2) of the Constitution, given that the Claimant is the holder of a 'Particular Office' by virtue of sub-section (1) thereof.
- (ix) Regulation 2 (1) of the Public Service Regulations, SR&O 27 of 1969, Chapter 128A of the Laws of Grenada, defines 'transfer' as "... the conferment, whether permanently or otherwise, of some public office, other than that to which the officer was last substantively appointed, not being a promotion; ...". Let me pause to say that the many Letters of Appointment in this case each state that the Claimant was "appointed" to the post of Executive Director and yet we are referring to the definition of 'Transfer'. This is so because the same Regulation states that "appointment" means the conferment of an office of emolument in the public service ... *upon a person not in the public*

service;...” [Italics added]. So clearly, the Claimant’s “appointment” was in Law a ‘transfer’. Hence the reference to that definition.

- (x) Finally, the Claimant submits that what in effect happened was that the Claimant was ‘retired’ pursuant to Section 84 (8) of the Constitution.

RELIEFS SOUGHT BY THE CLAIMANT

- [85] *“1. A declaration that when Her Excellency the Governor General acting in accordance with the advice of the Public Service Commission (PSC) transferred the Claimant with effect from February 17, 2014 “to hold another post in the Public Service in Grade M to be determined by the PSC”, Her Excellency the Governor General acted irrationally and or unreasonably and or arbitrarily and or surrendered and or abdicated her discretion, each of which circumstances rendered the transfer a contravention of section 85 (2) of the Constitution of Grenada and therefore unconstitutional, null, void and of no effect in law.*
- [86] *2. A declaration that the decision of the PSC to approve the appointment of the Claimant to the post of Executive Director of Anti-Money Laundering and Counter [Combating] Terrorism Financing Commission (AML/CTFC), Ministry of Legal Affairs with effect from February 17, 2014 was contrary to or a contravention of section 85 (2) of the Constitution of Grenada and is therefore unconstitutional, null, void and of no effect in law.*
- [87] *3. A declaration that the purported transfer of the Claimant to the post of Executive Director of AML/CTFC, Ministry of Legal Affairs and the circumstances leading up thereto was in reality a termination of the Claimant’s appointment of Secretary to the Cabinet to facilitate the reorganisation of her Department, the Office of the Prime Minister, as a consequence of the new administration assuming the government as provided for by Regulation 46 of the PSC Regulations, 1969.*

- [88] 4. *A declaration that the post of Executive Director of AML/CTFC, Ministry of Legal Affairs is not a post in the Public Service of Grenada of an equivalent status to that of the Secretary to the Cabinet of Grenada to which the Claimant may be transferred pursuant to Regulation 46 (6) of the PSC Regulations, 1969, thus requiring the Claimant to retire from the Public Service of Grenada for the re-organisation of her Department, the Office of the Prime Minister within the meaning of section 84 (8) of the Constitution of Grenada.*
- [89] 5. *A declaration that the Claimant having been required to retire for the reorganisation of her Department, the Office of the Prime Minister, she is entitled to be paid pension and retiring benefits as if she had attained the compulsory age as guaranteed by section 84 (8) of the Constitution of Grenada.*
- [90] 6. *Damages.*
- [91] 7. *Such further or other order as to this Honourable Court seems just.*
- [92] 8. *Costs."*
- [93] Sections 84 (1) and (8) of the Constitution are as follows:
"84" (1) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the Public Service (including the power to confirm appointments, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office, and the power to grant leave, shall vest in the Public Service Commission.
(2) ...,
...,
(8) Every officer who is required to retire on abolition of his office or for the purpose of reorganization of his Ministry or Department shall be entitled to pension and retiring benefits as if he had attained the compulsory retiring age".

ANALYSIS AND DECISION

[94] **Declaration 3 is refused.**

- (i) There is no evidence that a reorganization of the Office of the Prime Minister was undertaken.
- (ii) There is likewise no evidence from which a reorganization of that Office can be reasonably inferred.
- (iii) Further, the evidence before me does not admit of any of the predicates set out in Regulation 46 of the Public Service Regulations.
 - (a) There was no office that was being abolished: [sub. para. (1)];
 - (b) There was no retirement or removal of "... an officer from the public service for the purpose of facilitating the organization of a Department or Ministry to which he belongs in order to effect greater efficiency or economy, ..." and there is no evidence that "... the Permanent Secretary or Head of Department ..." having made the necessary "... report thereon to the Chief Personal Officer for Consideration by the Commission, and [his/her having recommended] with his reasons therefor, which officer shall be retired or removed from the public service in consequence of such organization.": [sub. para. (2)].
 - (c) There is no evidence of the giving to the Claimant of any such sub-para (2) recommendation: [sub-para (3)].
 - (d) There is no evidence of a dispensation with sub-paragraphs (1) and (2) so as to engage sub-paragraphs (4) and (5); and as a consequence of the foregoing, sub-paragraph (6) cannot arise.
- (iv) Further, and more importantly, it is Section 85 (2) of the Grenada Constitution which governs the office of the Claimant and, on a close analysis of Regulation 46, it becomes clear that that Regulation cannot apply to the particular Office of Secretary to the Cabinet, because
 - (a) that Office is a Constitutional Office which cannot be abolished save for a Constitutional amendment, and
 - (b) Section 85 (2) sets out the procedure for dealing with the appointment, transfer, removal and discipline of persons

holding that, and like particular offices in the Grenada Public Service.

- (v) It is also clear that Regulation 46 applies to Public Officers to whom Section 84 of the Constitution applies, and not to Public Officers to whom Section 85 of the Constitution applies.

[95] **Declarations 4 and 5 are refused:**

Section 84 of the Constitution is, by virtue of sub-section (3), expressly made inapplicable to any Public Office to which Section 85 applies. It follows that the Claimant is not covered by Section 84, and is not entitled to any relief thereunder.

[96] **Declaration 1 is granted:**

- (i) The Governor-General is required by Section 85 (2) of the Grenada Constitution to appoint or remove [which includes 'transfer'; per Saunders, J.A., as he then was, in **Grenada Technical & Allied Workers Union of Public Workers Union v. Public Service Commission, Attorney General & Anor.**, (Grenada) Civil Appeal No.11 of 2003] a Public Officer to whom the Section applies -- like the Secretary of the Cabinet -- acting in accordance with the advice of the Public Service Commission.
- (ii) Was the Governor-General so acting when, upon the expressed advice of the Public Service Commission, she issued the letter on February 6, 2014 transferring the Claimant "with effect from 17th February 2014, to hold another post in the Public Service *in Grade M to be determined by the Public Service Commission.*"? [Italics supplied]
- (iii) The answer to this question would be 'Yes' only if it can be said that the Governor-General's sole function would be to ceremonially 'rubber stamp' every advised appointment, removal, or transfer which is sent to her by the Public Service Commission pursuant to Section 85 (2) of the Grenada Constitution, thereby rendering the purpose of Section 85 of the Constitution otiose. This, I am of the considered opinion, is a result which cannot apply to any section of any written Constitution.

- (iv) There must be a purpose for the Section 85 (2) involvement of the Governor-General; otherwise Section 84 would have sufficed alone. But there is in fact Section 85, and I have endeavoured to glean its purpose in this decision.
- (v) In **Felix Da Silva and the Attorney-General of St. Vincent & the Grenadines**, Civil Appeal No. 16 of 1997, at page 3, Byron C.J. (Ag), as he then was, was clear in saying that the sections equivalent to Sections 84 and 85 in the Grenada Constitution, in the St. Vincent & the Grenadines Constitution, sections 78 and 79 "... afforded constitutional protection..." to the public officer.
- (vi) Byron C.J. (Ag), at page 4 put that "protection" in these words: "Both sections provide safeguards against arbitrary and whimsical executive action and they both require the Public Service Commission to act judicially in the discharge of its duty." To this I would respectfully add the safeguard in Section 85 (2) of the Governor-General, who is also expected to act judicially in the discharge of her Section 85 (2) duty.
- (vii) But can it be the case that the Governor-General is obliged to act on the advice of the Public Service Commission *without exception* in Section 85 advisements? Would such be a "judicious discharge of her duty"?
- (viii) What if the Commission advises the Governor-General to appoint or transfer a particular officer to whom Section 85 (1) of the Constitution applies, say the Secretary to the Cabinet, to the post of Police Constable?
- (ix) Does not the Governor-General have a duty to ensure that the advice she receives accords with the Law before she makes the appointment or transfer, so that the officer is being transferred to a post in the Public Service of equal standing?
- (x) In order to do so, must not the Governor-General be advised by the Public Service Commission of the office or post to which the Public Servant is being transferred, as did not happen in this case, and thereupon *transfer the person to that specific named post*?
- (xi) This the Governor-General's Instrument of February 6, 2014 did not do. It purported to transfer the Claimant to "... another post in the

Public Service in Grade M *to be determined by the Public Service Commission.*”

- (xii) That italicized clause leads me to the inexorable conclusion of fact that, at the moment in time when the Governor-General acted in accordance with the advice of the Public Service Commission and issued this instrument of transfer, not only was she in fact unaware of the post to which the Claimant was to be transferred, having not being so advised, but that in fact that post was yet to be determined by the Public Service Commission, notwithstanding the issue by the Public Service Commission of a Letter of Appointment to the Office of Executive Director of even date.
- (xiii) The Governor-General was not, on the face of the instrument of transfer, advised by the Public Service Commission as to what post the Claimant was being transferred. So there being lacking the specificity of the post or office to which the Claimant was being transferred, it follows that the Governor-General did not advise herself, and indeed could not advise herself that the Claimant was not being demoted under the guise of a transfer.
- (xiv) There is no evidence whatsoever to support any inference that these two letters/instruments were ‘conjointly issued’ so as to attempt to essay a fusion thereof, and therefore deposit the requisite knowledge in the Governor-General, by way of advice from the Commission, as to the office to which the Claimant was being transferred. That, at best, would be phantasmagorical.
- (xv) Equivalency is not restricted only to the pay and emoluments Grade to which the Officer is being transferred. It must include such factors as responsibility, status, challenges of the post, rank in the Public Service hierarchy and the like.
- (xvi) And the Governor-General is obliged to act judicially in the discharge of her Section 85 (2) Constitutional duty in ensuring that the Public Servant receives the protection inherent in that section.
- (xvii) How is the Governor-General to make a judicial assessment on the advice tendered to her by the Commission if the Commission does not advise her of the post or office to which she is to transfer the Public

Servant in the exercise of her Section 85 (2) duties? How is she to determine that the officer is being transferred horizontally if she is not advised of the post or office to which the officer is being transferred?

- (xviii) On the evidence before me, the Claimant was the most Senior Public Servant *in rank*! There is no office higher than hers in the Grenada Public Service, and although there are some of equivalent Grade, they must necessarily *rank* below hers by virtue of her Office being, additionally, the Head of the Public Service of Grenada.
- (xix) She was the Chairman of the Management Team of Government. There can only be one such office.
- (xx) She was Accounting Officer for the Department.
- (xxi) She was 'Primus Inter Pares' with respect to all Civil Servants, just as the Prime Minister is 'Primus Inter Pares' among all Cabinet Members.
- (xxii) The Office of Secretary to the Cabinet is therefore not, on the evidence before me, in the same category as the office of the Executive Director of AML/CTFC. It is of a superior category in every sense of that word.
- (xxiii) It must necessarily follow, as surely as the night follows the day, that there was in fact no post of equal status and rank within the Grenada Public Service to which the Claimant could have been transferred without infringing upon the mandate of equality in status and rank -- absent just grounds for demotion, which is not a factor in this case, or the creation of a new and "equal" post.
- (xxiv) Ergo, it cannot be that the Governor-General is bound to make an appointment without reference to the Office to which the Public Servant is being appointed (used generically to include 'transferred') because the Governor-General must act judicially in the discharge of her Section 85 (2) duties. To do otherwise would be to abdicate the Constitutional responsibilities of that High Office, and to act in judicially.
- (xxv) That this is so may be gleaned from a comparison of the requirements of Sections 84 and 85. Section 84 appointments etc. do not require the Governor-General's involvement. Section 85 does. Why? Because in Section 85 we are dealing with 'particular' offices from the

level of Permanent Secretary up to Secretary to the Cabinet, and they are afforded the extra protection of the Governor-General's duties.

- (xxvi) If I am correct on the above, it must be, as a matter of principle, that when the Public Service Commission renders advice to the Governor-General in respect of an appointment or transfer -- used generically to cover all acts of which the Governor-General is mandated to do by Section 85 (2) of the Constitution -- the Governor-General must be fully apprised of the post or office to which the advice relates so as to ensure that she is discharging her Constitutional duties judicially.
- (xxvii) To expect otherwise would be risking exposing the Office of Governor-General to odium.
- (xxviii) I hasten to add that, once the advised post or office to which the Public Servant is being transferred is equal to that from which he/she is being transferred, the Governor-General is obliged to make the appointment or transfer as advised.
- (xxix) But if, as in the example above, the advice is manifestly wrong on its face, it cannot be that the Governor-General is required to "hold her nose" and affix her Seal of Office to an appointment made on that advice. She must have *some* discretion to refuse to affix her Seal of Office, however narrow, restricted and limited that discretion may be.
- (xxx) For example, once the post or office to which the transfer is being advised is equal to that from which the person is being transferred, the Governor-General must sign the instrument. The Governor-General has no discretion to refuse to sign the instrument, or to recommend the appointment to, or appoint the officer to another, but equal post or office different to that advised by the Public Service Commission.
- (xxxi) In the circumstances of this case, can it be said that the Governor-General, in transferring the Claimant from the Section 85 (1) protected 'particular office' of Secretary of the Cabinet "... to hold another post in the Public Service in Grade M to be determined by the Public Service Commission" acted in accordance with her Constitutional responsibility under Section 85 (2)?
- (xxxii) In my judgment the answer is no. It is no because it is very clear from the evidence before me -- and the lack of evidence put forward by the

Defendants -- that the Governor-General, in signing and making the transfer, was not aware to what office the Claimant was being advised to be transferred at the time she made the transfer. All she knew was that, whatever post or office it was to be, it would be a Grade M post or office.

- (xxxiii) And if she was not aware of the office to which the Claimant was being transferred, the Governor-General would not be in any position to ensure that the advice which she had received from the Public Service Commission, and upon which she was required to act, was proper.
- (xxxiv) Is the Governor-General's letter of February 6, 2014, saved by the Public Service Commission's letter of even date appointing the Claimant to the post of Executive Director -- an appointment which was perfectly within the power of the Commission to make without the act of the Governor-General, in non-Section 85 circumstances? Conversely, is the Commission's appointment of the Claimant to the post of Executive Director saved by the Governor-General's said 'transfer'?
- (xxxv) It appears not, because that appointment cannot constitute the 'advice' which the Governor-General is required to have in making any Section 85 (2) appointments or transfers. It is an independent act of the Commission, unrelated in any event to Section 85, and it cannot be called upon in aid of the deficit in the Governor-General's February 6 Transfer. Likewise, the Governor-General's purported transfer to no specific office at all cannot be merged with the Commission's Section 63 (2) appointment to cloak it with Section 85 (2) sanctity.
- (xxxvi) They are two separate and distinct powers -- Section 85 (2) of the Constitution by the Governor-General, and Section 63 (2) of the Proceeds of Crime Act by the Commission -- which were being exercised with the only point of convergence being the person to whom the powers being exercised were directed.
- (xxxvii) Section 84 of the Constitution gives the Commission, acting on its own, the power to transfer and appoint etc. Public Officers who are not 'Particular officers' governed by Section 85.

(xxxviii) I have not found in the Constitution anything which permits the conjoining of the exercise of these two separate and distinct powers.

[97] In the premises, and for the foregoing reasons, I hold that the Governor-General, in purporting to transfer the Claimant from the office of Secretary of the Cabinet, acted in contravention of her Section 85 (2) of the Constitution duties in acting upon the advice of the Public Service Commission to transfer the Claimant "... to hold another post in the Public Service in Grade M to be determined by the Public Service Commission." She had no power under Section 85 (1) to punt the decision which post or office the Claimant was to be appointed to by her back to the Public Service Commission for them to make. The advice is theirs to give; the decision is hers to make. The Governor-General therefore acted ultra vires the powers given to her by Section 85 (1) of the Constitution of Grenada.

[98] That purported transfer is therefore null, void and of no effect, *ab initio*.

[99] **Declaration 2 is refused**

I am forced to refuse this Declaration based on the Authority of **Da Silva** where Byron C.J (AG), in a case in which the Public Servant, Da Silva, was 'transferred' from the post of Superintendent of Airports by the Governor-General, acting in accordance with the advice of the Public Service Commission, [under their equivalent of Section 85 (2)] and appointed to the post of Assistant Secretary in the Ministry of Tourism by the Public Service Commission [under their equivalent of Section 84 (1)], said, at page 3, "The effect of this section [our 85 (2)] is that the appellant could only be removed from his post of Superintendent of Airport [which is deputy head of department] by the Governor-General acting on the advice of the Public Service Commission. The uncontroverted evidence which made it clear that he was removed by the Governor-General acting on the advice of the Public Service Commission satisfied the constitutional provisions."

[100] Byron C.J. (Ag) goes on: "The appointment to Assistant Secretary also carried constitutional protection prescribed by Section 78 of the Constitution as

follows: [Here Justice Byron sets out Section A 78 (1) of the St. Vincent & The Grenadines Constitution, which is in the same terms as Section 84 (1) of the Grenada Constitution and continues] In this case too the uncontroverted evidence was that he was appointed by the Public Service Commission.”

[101] Out of an abundance of caution, I must reiterate that in this case, unlike in the **Da Silva** case, the Governor-General’s purported transfer of the Claimant was, on its face, bad in Law, in that it purported to transfer the Claimant to a post in Grade M in the Public Service “... to be determined by the Public Service Commission.” Whereas in **Da Silva** the instruments were, on their faces, good in Law.

[102] Thus it is stated by no less an authority than the Eastern Caribbean Court of Appeal that a Public Servant who is required to be transferred, removed etc., under Section 85 (2) of the Constitution by the Governor-General, acting in accordance with the advice of the Public Service Commission, can then be appointed to a post or office by the Public Service Commission acting pursuant to Section 84 (1) of the Constitution, without reference to the Governor-General under Section 85 (1) at all. I am bound to follow this decision, regardless of how difficult it is for me to navigate it, which decision, I were able to do so, I would, like the proverbial “...two roads in the Yellow Wood...,” diverge from.

[103] So that although the Public Service Commission, in appointing the Claimant to the post of Executive Director AML/CTFC, acting under the powers to do so vested in it by the Proceeds of Crime Act, it remains cloaked in its Section 84 (1) protective garments.

CONCLUSION

[104] The Declarations 2, 3, 4 and 5 sought are refused.

[105] Declaration 1 is granted.

[106] I wish to assure Learned Counsels for the Parties that I mean no offence in not having referred to most of the cases to which they referred the Court. Those not referred to were either distinguishable from the present case, or the principles of Law enunciated therein are so ubiquitous as to need no further stating. I assure Counsel that the cases were well read.

[107] I wish to thank Mr. Rohan Phillip, Counsel for the Claimant, Mr. Dwight Horsford, Solicitor General, and Miss Francine Foster, Counsels for the Defendants, for their excellent representations of their Clients, and for the invaluable assistance they gave to this Court.

[108] **IT IS HEREBY ORDERED:**

- (1) That Declaration 1 is granted, and it is **HEREBY DECLARED THAT** the purported transfer of the Claimant by the Governor-General dated 6 February, 2014, "... with effect from 17th February, 2014, to hold another post in the Public Service in Grade M to be determined by the Public Service Commission" is unconstitutional, null, void and of no effect, ab initio;
- (2) That Declarations 2,3,4 and 5 are refused;
- (3) That in consequence of the findings with respect to Declarations 1 and 2, the net effect of both is that the Claimant was, and remains the Secretary to the Cabinet on assignment to the post of Executive Director, AML/CTFC, with effect from 17th February, 2014;
- (4) The Claimant is to have her Costs in the sum of EC\$7,500.00.

[109] **POSTSCRIPT**

- (a) On the facts of this case there is and was no Bad Faith on the part of anyone.
- (b) The delay in and problem with the transfer came about because of the structure that is in place with regards to the Public Service – one inherited from a different country with a different Constitutional culture to ours.

- (c) In fact, having mutually agreed that the Claimant should be put elsewhere, the strictures of the Public Service Regulations and the Grenada Constitution made it impossible for that to occur, given that the Claimant is the most Senior Public Servant in the System. There is no equivalent post or office to which she may be transferred, unless on assignment in her substantive post.
- (d) This the Claimant clearly recognized from the outset; hence her pleas to be retired.
- (e) The Public Service Commission and the Attorney General found themselves in a conundrum, which can explain the many superseding letters as they tried to fashion a fair garment from nothing.
- (f) They tried in good faith to do so but, they were doomed by the very Constitution which governs them.
- (g) In this time of Constitutional Reform, perhaps it would be prudent for that Commission to address this anomaly.
- (h) I will say no more.

.....
THOMAS W.R. ASTAPHAN, Q.C.
High Court Judge