

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

HIGH COURT OF JUSTICE

SUIT NO. GDAHCV 2014/0339

BETWEEN:

**WILLAN THOMPSON
(Commissioner of Police)**

Claimant

and

**THE ATTORNEY GENERAL OF GRENADA
THE PUBLIC SERVICE COMMISSION**

Defendants

SUIT NO. GDAHCV 2014/0305

BETWEEN:

**SMITH ROBERTS
(Assistant Commissioner of Police)**

Claimant

and

**THE ATTORNEY GENERAL OF GRENADA
THE PUBLIC SERVICE COMMISSION**

Defendants

Appearances:

Mr. Rohan A. Phillip, Counsel for the Claimants
Mr. Dwight Horsford, Solicitor-General, for the Defendants

2014: November 27;
2015: January 12; 28.

RULING

(Constitution of Grenada, section 89; Police Act, Cap 244; transfer of Commissioner of Police and Assistant Commissioner of Police within public service without consent.)

[1] **WALLBANK, J. [Ag]:** An identical preliminary issue of constitutional law arises in both these separate cases. It is therefore convenient to address this in a single ruling. The issue is whether a commissioned officer in the Royal Grenada Police Force (“RGPF” or “the Police Force”) is liable to be transferred to another post of equivalent grade outside of the Police Force but within the public service of Grenada (“the PSG”).

[2] The question arises because the Claimants, who are the former Commissioner of Police and former Assistant Commissioner of Police respectively, were purportedly transferred from these posts without their consent, to be replaced by others, very shortly after a change of government. The Claimants have challenged the transfers. The Claimants contend that they are not liable to be transferred outside of the Police Force because they contend it has a “closed” nature. The Defendants contend that for commissioned officers above the rank of Sergeant, they are liable to be transferred. For the reasons set out below I have come to the view that the Defendants’ interpretation is correct.

[3] By Originating Motions (GDA HCV2014\0305) filed on June 24, 2014 and (GDA HCV2014\0339) filed on July 18, 2014 respectively, with supporting affidavits, the Claimants claimed *inter alia* a declaration in essentially identical terms:

“that the Royal Grenada Police Force (RGPF) is a special or closed department within the Public Service of Grenada established by the Police Act, Chapter 244 of the Continuous Revised Edition of the Laws of Grenada and as such a Police Officer cannot be transferred by the Public Service Commission (PSC) pursuant to section 89 of the Constitution of Grenada to a post outside of the RGPF without the consent or permission of the said Police Officer.”

- [4] The Defendants filed Notices of Application in respect of both Originating Motions on October 7, 2014 and September 24, 2014, respectively, asking that the Originating Motions, *“be struck out as disclosing no reasonable ground for bringing an action and accordingly the Court declines to hear the claim for constitutional relief as it does not present any substantial constitutional complaint.”*
- [5] On November 27, 2014, when the Defendants’ Notice of Application in respect of the First Claimant came up for hearing, upon the application of the Defendants and the parties agreeing, it was ordered that the preliminary issue identified above should first be determined as that would affect the further disposition of the matter.

The Claimants’ Submissions

- [6] The Claimants submitted as follows.

The Nature of the office of the Police Officer

- [7] The RGPF as presently constituted was established by section 3 of the Police Act¹; however, to properly appreciate the true nature of the office of the police officer it is necessary to look at its historical and common law origin.

Common Law Position:

- [8] According to ***Halsbury’s Laws of England***, *“in essence a police force is neither more nor less than a number of individual constables, whose status derives from*

¹ Chapter 244 of the Continuous Revised Edition of the Laws of Grenada. Section 3 states:
“(1) There is hereby established a police force to be known as the Royal Grenada Police Force, which shall consist of such number of police officers as may from time to time be ordered by the Governor-General and enrolled in the Force.
(2) ...”

the common law organised together in the interest of efficiency."² At common law³, the office of constable (police officer) is independent in the exercise of his or her daily functions (powers and duties), which are vested directly by law in each individual police officer. The police officer is the holder of a public position in which he owes obedience to no executive power outside of the police force. Also, the police officer is required to take the oath of office on appointment and prior to the commencement of his or her duties.

- [9] Further, in ***R (Tucker) v Director General of the National Crime Squad***⁴, the English Court of Appeal by Lord Justice Scott Baker opined:

"A police officer is in a different position from other employees. On becoming an officer he forfeits certain advantages, for example the right to strike or bring proceedings for unfair dismissal. He is subject to the discipline of his force and has by and large to go where and do what he is told. On the other hand he gains certain advantages for example the right to remain in service, health permitting, and to ill health and injury pensions. Dismissal or other disciplinary punishment is governed by statutory procedures that are amenable to judicial review in the event of any breach of public law principles, such as fairness."

- [10] This position was also accepted by the Bermuda Court of Appeal in the case of ***The Commissioner of Police, et al v Romero Allen and Others***⁵.

- [11] It follows, submit the Claimants, that the office of police officers in the RGPF, while being offices in the PSG, must be considered to be of a different character and nature than the other public offices in the PSG. The 'right to remain in service' is to remain in the service of the RGPF and not the general PSG. Consequently, the offices are not interchangeable and are incapable of transfers from the offices in the RGPF to the general PSG and vice-versa.

² *Halsbury's Laws of England* (4th ed.) Vol. 36, para 201

³ See *ibid*, paras 203 and 204.

⁴ [2003] EWCA Civ 57, para 27.

⁵ Civil Appeal No 6 of 2010; [2011] CA (Bda) 1 Civ, at para 28.

- [12] The Claimants noted that the Claimant, Willan Thompson, was first employed in the PSG as a Certificated II Teacher and had to resign from that post and enlist in the RGPF when he became a police officer (we are not told of what rank) notwithstanding that the Teaching Service and the RGPF are both departments within the PSG⁶. He could not simply be transferred from being a teacher to a police officer. The Claimants submit that the converse is also true that a police officer cannot simply be transferred into the general PSG.

Statutory and Constitutional Position

- [13] The Claimants call attention to the fact that the Police Act, apart from establishing the RGPF, provides that the RGPF function is –

“to be employed in Grenada for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime, the enforcement of all laws and regulations with which it is charged, and the apprehension of offenders”⁷.

- [14] The Police Act and Regulations set out the terms and conditions of service of the members of the RGPF. It also *inter alia* establishes the various ranks or order of seniority in the RGPF⁸; provides for the appointment, removal, resignation and discharge of the officers or members of the RGPF⁹; requires the police officer to take and sign the Oath of Allegiance¹⁰ on being appointed a police officer in the RGPF; and forbids the members of the RGPF from joining trade unions and other prohibited associations¹¹.

- [15] The Claimants submit, therefore, that although the RGPF is established by statute and provided for in the Constitution it was not intended to remove the special

⁶ See para. 18 of the Willan Thompson Affidavit sworn to and filed on July 18, 2014.

⁷ Chapter 244 of the Continuous Revised Edition of the Laws of Grenada, section 5

⁸ *Ibid*, section 4.

⁹ *Ibid*, sections 7, 8 and 9.

¹⁰ *Ibid*, section 12.

¹¹ *Ibid*, section 49.

features nor alter the fundamental character of the police officer which evolved historically as the office of constable at common law¹². Rather, the Claimants submit, it was to organise the police officers for efficiency; to codify the powers and duties of the police officer¹³; and to set the police officer further apart for protection under the Constitution¹⁴.

[16] The Claimants submit that an analysis of the provisions of the Constitution confirms this later proposition: Chapter VI of the Constitution deals with the Public Service of Grenada (PSG) and in particular Parts 1 and 2 thereof. Part 1 captioned "*The Public Service Commission*" comprises section 83, which provides for the establishment, composition, appointment and removal of the public service commissioners, and the procedures for the functioning of the commission; and section 84, which provides for the appointment, exercise of disciplinary control and removal from office of public officers generally in the PSG by the Public Service Commission. However, section 84 also states that its provisions will not apply to a number of offices, including, expressly and specifically, "*any office in the Police Force*"¹⁵.

[17] The offices which are excluded from section 84 of the Constitution are all contained in Part 2 of Chapter VI, which is captioned – "*Appointments, etc., to particular offices*", and provide for the appointment, removal, etc. to the offices of, Secretary to the Cabinet, permanent secretaries, head of a department of government and deputy head of a department of government (section 85); Director of Public Prosecutions (DPP) (section 86); Director of Audit (section 87);

¹² ***The Attorney-General of New South Wales v The Perpetual Trustee Company (Limited) & Others***, Privy Council Appeal No 20 of 1954 at page 5.

¹³ See the Police Act, Chapter 244 of the Continuous Revised Edition of the Laws of Grenada, sections 22 and 23.

¹⁴ ***Thomas v Attorney-General*** (1981) 32 WIR 375.

¹⁵ Chapter 128A of the Continuous Revised Edition of the Laws of Grenada, section 84 ...
"(3) The provisions of this section shall not apply in relation to the following officer, that is to say:-

- (a) any office to which section 85 of this Constitution applies;
- (b) the office of Director of Public Prosecutions;
- (c) the office of Director of Audit;
- (d) any office to which section 88 of the Constitution applies;
- (e) any office in the Police Force."

magistrates, registrars and legal officers (section 88); and the Police Force (section 89). Clearly, say the Claimants, the framers of the Constitution must have had a particular reason for removing these offices from the purview of the Public Service Commission and setting them apart from the other offices in the PSG.

[18] The Claimants submit that the reason for setting the particular offices apart from the rest of the offices in the PSG is that they are each closed or special albeit in their own particular way. The PSG is hierarchical in nature with the particular offices generally being the senior offices or posts within the service.¹⁶ The Secretary to the Cabinet¹⁷: the most senior post in the PSG above that of Permanent Secretaries and traditionally one of two posts at Grade M – the other being the Permanent Secretary of Finance. The Permanent Secretaries¹⁸ and heads and deputy heads of departments: these offices are the managers, supervisors and accounting officers of the various ministries and departments of government. The DPP and the Director of Audit are offices specific to the office holders and as such special elaborate arrangements are made for their removal from office. The magistrates, registrars and legal officers are the offices within the legal department of the PSG and include the officers in the Office of the DPP other than the DPP. The authority with jurisdiction (appointment, discipline, removal, etc.) over these officers is the Judicial and Legal Services Commission and they are transferable only among the offices within the legal department.

[19] Similarly, contend the Claimants, the Police Force must be a special or closed department because of the special nature or character of the office of the police officer – the oath of allegiance, and the functions, powers and duties of the police officer. Also, the RGPF is a disciplined force under the Constitution which excludes it from the protection of some of the fundamental rights and freedoms

¹⁶ The Claimants cite the Estimates of the Revenue and Expenditure of Grenada which, in the absence of a law establishing the offices or post in the PSG, as determining at any particular time the offices within the PSG.

¹⁷ Established by the Constitution of Grenada, section 68.

¹⁸ *Ibid*, section 67.

guaranteed under the Constitution¹⁹. Thus the observations in ***Clifford Jackson v Police Service Commission***²⁰ as to the nature and character of the office of the police officer in the Royal Antigua and Barbuda Police Force are equally applicable to the RGPF in every respect.

[20] Clearly, what was intended by the framers of the Constitution, submit the Claimants, is that the Public Service Commission is to carry out the responsibility of a public service commission in relation to the general public service, and that of a police service commission in relation to the RGPF.

[21] Further, argue the Claimants, the RGPF is also recognized as a special department within the PSG with a separate and distinct pay-scale, Grades PO1 to PO10 in the Estimates of the Revenue and Expenditure, and one which requires special training.

[22] The Claimants argue that the PSC must exercise its constitutional power and control in respect of the offices in the RGPF exclusively within the RGPF.

[23] The Claimants cite ***Delano Dennis v Kenneth Lalla (Public Service Commission Chairman) & Others***²¹ (a Trinidad & Tobago High Court case concerning a challenge to the transfer of a customs officer) in support of a proposition that the Police Force, being a disciplined force, is not one of the departments the PSC can transfer its members out of into the general PSG.

The Defendants Submissions

[24] The Defendants submit the following.

¹⁹ *Ibid*, section 18.

²⁰ ANU HCV2010/0487, at paras 4 to 8.

²¹ Trinidad & Tobago H.C.A 4143/95, decided September 30, 1996 (unreported) at page 6, 3rd paragraph.

Public officer defined

- [25] The Defendants start from the proposition that the Claimants answer the description of “*public officers*” as defined in the Constitution.²²
- [26] They then submit that the Claimant is employed in the service of the Crown in a civil capacity, as the Police are not military.²³
- [27] The Defendants remark that unlike other Commonwealth Caribbean states, Grenada has only one service commission, the Public Service Commission, an autonomous body specifically vested with the power of control over all public officers in the public service by the Constitution of Grenada. The PSC is independent and insulated from political interference by express constitutional design.²⁴
- [28] The Defendants next submit that power exercisable over Police officers below the rank of Chief of Police but above the rank of sergeant in Grenada is vested in the PSC (per **Section 89(2) of the Constitution**), and that the power of control over the general public service does not apply to the Police Force (per **Section 84(3) of the Constitution**).
- [29] The Defendants submit that the Claimants are clearly public officers amenable to the constitutional jurisdiction of the PSC.
- [30] The Defendants call attention to the definition of a “***transfer***” in the context of the civil service in the PSC Regulations SRO 27 of 1969:

“transfer” means 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; but the posting of an

²² See **Section 111** of the **Constitution of Grenada 1974**

²³ **Section 111** of the **Constitution**, *supra*

²⁴ **Sections 83(1) to (11), 83(12), 83(13) and 84(1) & (2)** of the **Constitution**

*officer referred to in regulation 29(2) of the Regulations in the circumstances mentioned therein shall not be regarded as a transfer for the purposes of these Regulations.”*²⁵

[31] The same definition section defines “particular offices” as any office to which section 85 of the Constitution applies, and “public office” as (a) any office in the public service to which section 84 of the Constitution applies; (b) subject to section (1) of the Constitution, the office of Chief of Police and (c) any office to which section 89(2) of the Constitution applies. A “public officer” is defined as any person holding or acting in any public office, and “public service” has the same meaning as that assigned to it in section 111 of the Constitution.²⁶ Section 111 of the Constitution defines “public service” to mean, subject to the provisions of that section, the service of the Crown in a civil capacity in respect of the Government of Grenada.

[32] The Defendants refer to section 28 of the PSC Regulations which provides:

“Particular officers, other than Permanent Secretaries, shall be transferred by order of the Governor-General acting in accordance with the advice of the Prime Minister.”

[33] The Defendants contend that the PSC has the power to transfer any public officer, with that power to transfer not being expressed but existing by necessary implication. The Defendants rely upon ***Grenada Technical & Allied Workers’ Union of Public Workers Union v. Public Service Commission, Attorney General & Anor.***, (Grenada) Civil Appeal No. 11 of 2003 (decided February 2, 2004) **Eastern Caribbean Court of Appeal (Unreported)** at paragraph [20] of the judgment *per* Saunders, J.A., in this regard. In that paragraph Saunders, J.A. agreed with a proposition that:

“I do not accept that because that power is not expressed it means that the power does not exist. The power to transfer, for example, is not

²⁵ Section 2 (definition provision) of the PSC Regulations SRO 27 of 1969.

²⁶ Ditto.

expressed but no one can doubt that the PSC has the power to transfer persons within the service from one office to another.”

- [34] The Defendants argue that the power to transfer is restricted naturally to those officers who are in the employ of the Government of Grenada in a civil capacity, except where those officers are specifically excluded. So that, once an officer answers the description of a public officer, he is liable to the exercise of the power of transfer vested in the PSC in relation to him.²⁷
- [35] The Defendants deny that the Police Force is a closed Department as the Claimants allege. Even the Commissioner of Police, say the Defendants, is liable to be transferred out of the force into the wider public service, as his post is not protected against removal in the same way as that of other offices such as Director of Audit and the DPP, in respect of which, deliberate language and elaborate procedure is used in the Constitution in the establishment of their security of tenure and status within the service. The Defendants cite **Ausbert Regis, Commissioner of Police v. Attorney-General of St. Lucia** (St. Lucia) Claim No. SLUHCV2010/0497, decided November 21st, 2011, High Court of Justice (Unreported) *per* Wilkinson J. at paragraphs 64 - 69 & 74 of the Judgment in support of this submission.
- [36] The Claimants have argued in response to this that the case of **Ausbert Regis (Commissioner of Police) v Attorney General of Saint Lucia** it is not binding on this Court and secondly, the decision of the Court was made without the benefit of the submissions and authorities cited to this Court in support of the Claimants case. In **Regis**, the issue for the court (submit the Claimants) was the meaning of ‘remove’ and whether in the absence of the word ‘transfer’ in the provision it was possible to transfer the officer. The Claimants submit that this is not the issue before this Court, as the Claimants have not contended that they cannot be

²⁷ Citing **Delano Dennis v. Kenneth Lalla (Public Service Commission Chairman) & Ors (Trinidad & Tobago) H.C.A 4143/95**, decided Sept. 30th, 1996, High Court of Justice, (Unreported) *per* Blackman J. at pgs 5 - 9

transferred – rather, that they are transferrable only within the Police Force in accordance with the power, procedure and practice as contemplated by the Constitution.

Discussion

- [37] Both sides appear to accept that the Police Force is part of the public service of Grenada, that members of the Police Force are public officers, and that they are liable to be transferred. So much must be right. Although the relevant provisions in section 89 of the Constitution speak of “removal”, as stated in ***Ausbert Regis (Commissioner of Police) v Attorney General of Saint Lucia***, paragraph [69], the ordinary English meaning of “removal” includes to transfer.
- [38] The question comes down to whether a transfer can be effected outside of the Police Force.
- [39] One difficulty in interpretation comes about because the PSC is an umbrella organization which deals with appointments, discipline and removal of all public officers, with specified exceptions. There is no separate commission for the Police Force in Grenada.
- [40] Another difficulty is that the material legislation is silent on whether a policer officer can be transferred out of the Police Force.
- [41] An aspect that appears to be uncontroversial is that both the PSC and the Police Force were set up to operate independently of the political agenda of the government.
- [42] Section 84 of the Constitution vests in the PSC the power to appoint, discipline and remove persons to and from offices in the public service. Section 84(3)

provides that this section does not apply in relation to a number of offices, including, by section 84(3)(e), “any office in the Police Force”.

- [43] By section 2 of the Police Act, a “police officer” is defined as any member of the Police Force.
- [44] Section 4 of the Police Act establishes four categories of ranks, in descending order: Gazetted Officers (the Claimants fall in this category), Inspector of Police, Subordinate Officers (which includes the rank of Sergeant) and Police Constable. By section 15 of the Police Act, Gazetted Officers are deemed to be Justices of the Peace.
- [45] Section 89 of the Constitution makes provision for the appointment, discipline and removal of police officers, as follows.
- [46] By section 89(1) the power to appoint and remove (*sic* – no powers of discipline are mentioned in section 89(1)) the Chief of Police vests in the Governor General, acting in accordance with the advice of the PSC. Prior to giving such advice the PSC is required to consult with the Prime Minister.
- [47] By section 89(2) the power to appoint, discipline and remove office holders below the rank of Chief of Police but above Sergeant vests simply in the PSC. Significantly, no fetters or parameters for the exercise of their discretion are expressed.
- [48] By section 89(3) it is the Chief of Police who is vested with the power to appoint, discipline and remove police officers of the rank of Sergeant and below.
- [49] That these powers are repeated in section 7 of the Police Act appears to be significant, in that the Police Act by section 16 makes provision for the qualifications for appointment to certain levels of police office, and these

provisions should be read together. Gazetted Officers are excluded. No qualifications are legislated for those ranks. One can only assume that this omission was deliberate.

[50] A broadly analogous position appears to apply in the United Kingdom. Chief Constables are appointed by Police and Crime Commissioners, or PCC, and it is for the PCC to decide how they wish to run their recruitment process and which candidate they wish to appoint, in line with three stated principles, of merit, fairness and openness.²⁸ Political or personal preference is not one of them. The Grenada legislation does not, as far as I have seen, stipulate these same principles, but that is not to say that they are not inherent to the decision making process. I need not address that aspect further for present purposes.

[51] Unlike in the United Kingdom however, the Constitution of Grenada and the Police Act and its subordinate legislation do not, as far as I have been able to ascertain, contain any requirement that a Chief of Police or Gazetted Officer should have been a member of the RGPF prior to being appointed to a rank in that category. Whilst in practice that will normally be the case, it seems entirely possible that the Governor General or PSC could, in the exercise of their discretion, appoint candidates in that category with the most appropriate leadership skills directly from overseas or from the private sector, or from the public service.

[52] A further exclusion of Gazetted Officers appears in the Police (Promotions) Regulations.²⁹ Those deal with the promotion of officers up to the level of Inspector. For officers above that rank there is no provision, but clearly as there are lower and higher ranks above the inspectorate there must be a basis upon which the PSC, and in the case of the Chief of Police, the Governor General, make the appointments. It is likely to be another, separate, issue from the one we

²⁸ Home Office Circular 20/2012, paragraphs 15 and 16.

²⁹ SRO 17 of 1959.

are currently addressing what the proper criteria are for removal, including transfer, from office.

[53] It appears that the RGPF is a closed department to a certain extent, for the purposes of entering it in a rank below that of a Gazetted Officer, and if personnel wish to leave to work elsewhere in the public service their application to do so requires the prior consent of the Commissioner of Police.³⁰ That must be because Police officers are people on whom special powers and responsibilities are conferred, and the Commissioner of Police needs to maintain a force with stable numbers.

[54] However the Constitution and the Police Act and subordinate legislation do not provide that officers such as the Chief of Police and Gazetted Officers cannot be transferred without their consent outside the Police Force.

[55] Furthermore, regulation 46 of the Public Service Commission Regulations 1969 makes very general provisions for transfer of public officers. There is nothing in this regulation which excludes members of the Police Force. One of the Claimants has given Affidavit evidence that his new position came with lower status and emoluments as his previous position. Although the Defendants cite dicta of Barrow J in **Brian Francis vs The Attorney General, GDAHCV2001/0521**, at paragraph [27], to the effect that the meaning of equivalency of “status” for purposes of regulation 46 is to be taken as equivalency of rank or grade, regulation 46 is also clear that the equivalency is to be not just of status, but also in terms of emoluments.

Conclusion and Order

[56] Taking the various provisions together, I am led to conclude that as long as a Chief of Police or other Gazetted Officer receives a rank or grade which is not

³⁰ Section 10, Police Regulations, SRO 26 of 1960 as amended

lower than which he or she previously held, and as long as he or she receives an emolument package that is not less than what he or she previously enjoyed, there is nothing preventing the Governor General (in the case of a Commissioner of Police) and the PSC (for other Gazetted Officers and others above the rank of Sergeant) deploying the talents and experience of such senior public servants outside the Police Force in the wider public service of Grenada.

[57] The first limb of the prayer in the Claimants' Originating Motions therefore falls away. The Court will order that these two matters shall stand adjourned to a hearing for directions and/or further disposition in respect of the other issues that arise.

[58] Although the Claimants were not successful with their arguments on this preliminary issue, the proper interpretation of the silence alluded to above in the governing legislation is not obvious, so there shall be no order as to costs.

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[59] Finally, the Court expresses its gratitude to Learned Counsel for all parties for their assistance.

Gerhard Wallbank
High Court Judge (Ag)