

**IN THE SUPREME COURT OF BELIZE A.D. 2021**

**CLAIM NO 43 OF 2021**

**BETWEEN**

**IAN HAYLOCK**

**CLAIMANT**

**AND**

**PRIME MINISTER OF BELIZE  
ATTORNEY GENERAL OF BELIZE  
ESTELLA BETTY ANN LESLIE**

**FIRST DEFENDANT  
SECOND DEFENDANT  
INTERESTED PARTY**

Before: The Hon. Mr Justice Westmin R.A. James (Ag)

Date: 16<sup>th</sup> April, 2021

Appearances: Mr Dean Barrow SC and Mr Darrell Bradley for the Claimant

Mr Godfrey P. Smith SC, Ms Samantha Matute-Tucker, Mr Jorge Mattus and Mr Hector Guerra for the Defendants

Mr Andrew Marshelleck SC for the Interested Party

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**JUDGEMENT**  
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1. By Notice of Application dated and filed on the 22<sup>nd</sup> January 2021, supported by affidavit sworn to and filed on even date, the Applicant sought permission of the Court to apply for Judicial Review and an interim injunction. I granted leave to the Claimant on the 9<sup>th</sup> February, 2021 to file for Judicial Review but refused to grant the interim order to stay the decisions of the Defendants pending the final determination of this matter.
2. The Claimants filed their Claim Form with supporting Affidavit on the 18<sup>th</sup> February, 2021 wherein they sought Judicial Review of the decision of the First Defendant's decision to advise the Governor General of Belize to designate the office of Comptroller of Customs and Excise as an office to which section 107 of the Constitution applies, with the effect of such designation (which took place by way of an Instrument signed by the Governor

General and dated 30<sup>th</sup> December 2020) being to remove from the Public Services Commission the power under Section 106 of the Constitution to appoint the Comptroller of Customs and Excise; with a further effect being to give such power instead to the Prime Minister by way of advice to the Governor General of Belize; and with a still further effect being that by instrument dated 30<sup>th</sup> December, 2020 the Governor General of Belize, acting upon the advice of the Prime Minister, appointed Estella Betty Ann Leslie to the post of Comptroller of Customs and Excise with immediate effect.

3. The Claimant challenged both Instruments of the Governor General resulting from the advice of the First Defendant and to pursue an order of certiorari to quash that advice and the appointment Instruments flowing from it.
4. Subsequent to leave being granted and the filing of the fixed date claim, the Defendant revoked the instruments dated 30<sup>th</sup> December, 2021 and replaced them with two new instruments dated 25<sup>th</sup> February 2021 after consultations were renewed with the Public Services Commission, the Commission confirmed in writing that it had no objections to the proposed designation of the post of Comptroller of Customs and Excise as a section 107 office. The Defendants in revoking, redesignating and reappointing the Interested Party was indeed intended to address and correct any deficiency in the prior designation or prior appointment and to ensure full consultation with the Public Services Commission as required by the Constitution.
5. The Claimant's Fixed Date Claim Form was amended by consent and the Claimant now pursue the following orders:
  - (i) A declaration that the First Defendant acted without consultation with the Claimant and other similarly situated members of the Public Service who were directly affected, or with any of the unions representing public service employees, before taking a decision to advise the Governor General to remove the post of Comptroller of Customs and Excise from the purview of Section 106 of the Constitution and to place it under Section 107 of the Constitution.
  - (ii) A declaration that the First Defendant acted without consultation, unfairly, in bad faith, discriminatorily and *Wednesbury* unreasonably, and that the First Defendant breached the Claimant's right to equal protection under the

law and his legitimate expectation of fair career advancement when the First Defendant advised the Governor General to remove the post of Comptroller of Customs and Excise from the purview of Section 106 of the Constitution and to place it under Section 107 of the Constitution

- (iii) A declaration that the designation of the post of Comptroller of Customs and Excise as a post that may be filled by appointment pursuant to Section 107(2) of the Constitution, which designation was effected by the Governor General by instrument dated 25<sup>th</sup> February 2021 is void and of no effect, and that appointments to fill the post of Comptroller of Customs and Excise was at all material times, and continues to be, required to be done pursuant to Section 106 of the Constitution, and further that the appointment of Estella Betty Ann Leslie as Comptroller of Customs and Excise, done by instrument dated 25<sup>th</sup> February 2021 is void and of no effect.
- (iv) An Order of certiorari quashing the decision of the First Defendant to advise the Governor General to designate the post of Comptroller of Customs and Excise as a post falling within Section 107(2) of the Constitution, and further quashing the instrument of designation made by the Governor General dated 25<sup>th</sup> February 2021.
- (v) An order of certiorari quashing the instrument of appointment, dated 25<sup>th</sup> February 2021 purportedly made pursuant to Section 107(2) of the Constitution, done by the Governor General acting in accordance with the advice of the First Defendant, appointing Estella Betty Ann Leslie to the post of Comptroller of Customs and Excise.
- (vi) Such further or other relief as this Honourable Court may deem just.
- (vii) Costs

6. The Claimant's case is that he has served thirty-three years in the Public Service and is the most senior Deputy Comptroller of Customs and Excise. He argues that in December 2020 when the then Comptroller of Customs and Excise, Colin Griffith, whose term was extended advised the Financial Secretary in writing that he was demitting office, he also advised the Financial Secretary that he was turning over control to the Claimant as the most Senior Deputy Comptroller of Customs and Excise pursuant to Circular 22 of 2010 dated August 23, 2010.

7. The Applicant indicated that on the 21<sup>st</sup> December 2020, he was called into a meeting with the Financial Secretary at which time he was told that it was decided a less senior officer, Ms Estella Betty Ann Leslie, the Interested Party, was going to be promoted to the office of Comptroller of Customs.
8. The Claimant contends that without consulting him or person in like position to him or any of the unions representing the public service employees, the First Defendant unlawfully advised the Governor General of Belize to designate the post of Comptroller of Customs and Excise as a section 107 appointment, changing it from a Section 106 appointment.
9. The Claimant as a supplementary argument also alleges that he was deprived of the promotion to which he was entitled under the legal regime promulgated by section 106 of the Constitution. He also argued that his right to equal protection under the law was breached with the First Respondent acting unlawfully, unfairly, discriminately, unreasonably in the *Wednesbury* sense and in breach of his legitimate expectation to fair treatment in career advancement, including being promoted to the post of Comptroller of Customs and Excise under the Public Service Rules, Regulations and Circulars.

**Did the First Defendant owe a duty to consult with the Claimant before taking a decision to advise the Governor General to remove the post of Comptroller of Customs and Excise from the purview of Section 106?**

10. The crux of the case for the Claimant in this regard is that the First Defendant was required to consult with the Claimant before the First Defendant made the decision to advise the Governor General to designate the office of Comptroller of Customs as a Section 107 office.
11. Section 107 of the Constitution provides:

*(1) This section applies to the offices of Solicitor General, Secretary to the Cabinet, Financial Secretary, Chief Executive Officer, Commissioner of Police, Commandant, Belize Defence Force, Commandant, Belize National Coast Guard Service, Superintendent of Prisons, Ambassador, High Commissioner or principal*

*representative of Belize in any other country or accredited to any international organisation, and, subject to the provisions of this Constitution, any other office designated by the Governor-General, acting in accordance with the advice of the Prime Minister given after consultation with the Public Services Commission.*

*(2) The power to appoint persons to hold or to act in offices to which this section applies (including the power to transfer or to confirm appointments) and, subject to the provisions of section 111 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.*

12. I think it is important to note from the outset what was the effect of this provision.

This provision changes the decision maker, that is, the person/body that decides who is appointed to a specific post. It changes that decision maker from the Public Services Commission to the Prime Minister. This provision and also section 106 does not itself appoint a person to a job it simply indicates the decision maker.

13. While there is no provision in section 107 for consultation with a potential occupant of the office, an obligation to consult may arise by way of an express or implicit statutory duty, or be required in order to give effect to a legitimate expectation of consultation. As stated in *R (Harrow Community Support Ltd) v Secretary of State for Defence [2012] EWHC 1921(Admin)* a duty to consult does not arise in all circumstances otherwise the business of government would grind to a halt. The UK Supreme Court considered this issue in *R (ota Moseley) v London Borough of Haringey [2014] UKSC 56, para 35* where Lord Reed took the view that there is no general common law duty to consult persons who may be affected by a decision, but where there is a legitimate expectation of such a consultation a common law duty arises. As Lord Reed put it:

*“A duty of consultation will however exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation.”*

14. In the same case, Lord Wilson at para 23 pointed out that a duty to consult may arise 'in a variety of ways', but in particular by the common law duty on a public body 'to act fairly.'
15. In *The Public Services Association of Trinidad and Tobago v the Permanent Secretary Ministry of Energy and Energy Industries CV2017-02934* Justice Kokaram as he then was, outlined at paragraph 78 when the duty to consult may arise as culled from the relevant authorities:

*"78. R (Plantagenet Alliance Ltd) v Secretary of State for Justice [2014] EWHC 1662 (Admin) Hallet J usefully summarized the law of when the duty to consult may arise and I adopt the general principles culled from the authorities:*

*[97] A duty to consult may arise by statute or at Common Law. When a statute imposes a duty to consult, the statute tends to define precisely the subject matter of the consultation and the group(s) to be consulted. The Common Law recognises a duty to consult, but only in certain circumstances.*

*[98] The following general principles can be derived from the authorities:*

*1. There is no general duty to consult at Common Law. The government of the country would grind to a halt if every decision-maker were required in every case to consult everyone who might be affected by his decision. Harrow Community Support Ltd v Secretary of State for Defence [2012] EWHC 1921 (Admin) at para 29, [1993] 3 All ER 92, [1993] 3 WLR 154, per Haddon-Cave J).*

*2. There are four main circumstances where a duty to consult may arise. First, where there is a statutory duty to consult. Second, where there has been a promise to consult. Third, where there has been an established practice of consultation. Fourth, where, in exceptional cases, a failure to consult would lead to conspicuous unfairness. Absent these factors, there will be no obligation on a public body to consult (R (Cheshire East Borough Council) v Secretary of State for Environment, Food and Rural Affairs [2011] EWHC 1975 (Admin) at paras 68 – 82, especially at 72).*

*3. The Common Law will be slow to require a public body to engage in consultation where there has been no assurance, either of consultation (procedural expectation), or as to the continuance of a policy to consult (substantive expectation) ((R Bhatt*

*Murphy) v Independent Assessor [2008] EWCA Civ 755, at paras 41 and 48, per Laws LJ).*

4. *A duty to consult, ie in relation to measures which may adversely affect an identified interest group or sector of society, is not open-ended. The duty must have defined limits which hold good for all such measures (R (BAPIO Ltd) v Secretary of State for the Home Department [2007] EWCA Civ 1139 at paras 43- 44, per Sedley LJ).*

5. *The Common Law will not require consultation as a condition of the exercise of a statutory function where a duty to consult would require a specificity which the courts cannot furnish without assuming the role of a legislator (R (BAPIO Ltd) (supra) at para 47, per Sedley LJ).*

6. *The courts should not add a burden of consultation which the democratically elected body decided not to impose (R(London Borough of Hillingdon) v The Lord Chancellor [2008] EWHC 2683 (Admin), [2009] LGR 554, [2009] 1 FCR 1).*

7. *The Common Law will, however, supply the omissions of the legislature by importing Common Law principles of fairness, good faith and consultation where it is necessary to do, eg in sparse Victoria statutes (Board of Education v Rice [1911] AC 179, at p 182, 9 LGR 652, 75 JP 393, per Lord Loreburn LC) (see further above).*

8. *Where a public authority charged with a duty of making a decision promises to follow a certain procedure before reaching that decision, good administration requires that it should be bound by its undertaking as to procedure provided that this does not conflict with the authority's statutory duty (Attorney-General for Hong Kong v Ng Yuen Shiu [1983] 2 AC 629, [1983] 2 All ER 346, [1983] 2 WLR 735, especially at p 638G).*

9. *The doctrine of legitimate expectation does not embrace expectations arising (merely) from the scale or context of particular decisions, since otherwise the duty of consultation would be entirely open-ended and no public authority could tell with any confidence in which circumstances a duty of consultation was be cast upon them (In Re Westminster City Council [1986] AC 668, at 692, [1986] 2 All ER 278, 84 LGR 665, (HL), per Lord Bridge).*

10. *A legitimate expectation may be created by an express representation that there will be consultation (R (Nadarajah) v Secretary of State for the Home Department*

*[2003] EWCA Civ 1768), or a practice of the requisite clarity, unequivocality and unconditionality (R (Davies) v HMRC [2011] UKSC 47, [2012] 1 All ER 1048, [2011] 1 WLR 2625 at paras 49 and 58, per Lord Wilson). 11. Even where a requisite legitimate expectation is created, it must further be shown that there would be unfairness amounting to an abuse of power for the public authority not to be held to its promise (R(Coughlan) v North and East Devon Health Authority [2001] QB 213 at para 89, [2000] 3 All ER 850, 97 LGR 703 per Lord Woolf MR)."*

16. The Claimant at paragraph 18 of his submissions relying on the decision of *Mosely (supra)* first contends that as someone being affected by the redesignation fairness would dictate that he be consulted. I disagree that just having an interest or being affected by a decision would impose a duty on a decision maker to consult with a person especially when a constitutional procedure has been outlined by the Constitution. As stated by Justice Kokaram later on in the judgment of *PSA v the Permanent Secretary Ministry of Energy and Energy Industries (supra)* at para 92, in absence of a legitimate expectation of consultation, a duty to consult does not usually arise simply from the extent of the interest at stake or the context. The recognition of a duty to consult simply on the basis of the extent of the interest or its context "*would be entirely open ended and no public authority could tell with any confidence in what circumstances a duty of consultation was cast upon them.*"<sup>1</sup>

17. There is good reason for this as a decision maker will have various competing interest to consider and when exercising such a public function it would invariably affect everyone in some way. In *R (on the application of Association of Personal Injury Lawyers and another) v Secretary of State for Justice [2013] EWHC 1358 (Admin)* at paragraphs 32 and 33 Elias L.J. relying on *R (on the application of Bhatt Murphy (a firm)) v The Independent Assessor [2008] EWCA Civ 755*, where Laws LJ observed that:

*[33] Public authorities typically, and central government par excellence, enjoy wide discretions which it is their duty to exercise in the public interest. They have to decide the content and the pace of change. Often they must balance different, indeed opposing, interests across a wide spectrum. Generally, they must be the masters of procedure as well as substance; and as such are generally entitled to keep their own counsel."*

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<sup>1</sup> *Re Westminster City Council and others [1986] A.C. 668 at p 692.*



18. Moreover, Elias L.J. went on to quote dicta from *R (on the application of London Borough of Hillingdon and others) v The Lord Chancellor and others* [2008] EWHC 2683 (admin), [2009] LGR 5554, [2009] 1 FCR 1, which stated: “Decisions made by public authorities in the exercise of their discretion will often yield benefit to some and loss to others. It is not the law that authorities must necessarily consult those who are liable to be disadvantaged by a proposed decision before they can make the decision. Government and administration would be impossible if that were the case.”

19. It is of course best practice to have consultation with all those affected by a decision but it doesn't create a duty to consult. In *R v Devon County Council ex p Baker* [1995] AER 85 Simon Brown LJ said as follows:

*“I come then to the main question of consultation. Obviously it could be said to be best practice, in modern thinking, that before an administrative decision is made there should be consultation in some form, with those who will clearly be adversely affected by the decision. But judicial review is not granted for a mere failure to follow best practice. It has to be shown that the failure to consult amounts to a failure by the local authority to discharge its admitted duty to act fairly.”*

20. The mere fact that the Claimant was affected by the decision did not mean that there was a common law duty imposed on the First Defendant when exercising his constitutional power under section 107 of the Constitution to consult with the Claimant without more.

21. The Claimant also argued that there was a common law duty on the First Defendant to consult the Claimant himself because the Claimant as the most senior Deputy Comptroller of Customs had a legitimate expectation and entitlement to becoming the Comptroller under Section 106 Rules, Regulations and Circulars. He argued that he would have been appointed as the Comptroller of Customs and so his legitimate expectation and interest was affected and consultation was required. The Defendants submitted that there was no breach to the Claimant's legitimate expectation since appointments were not made solely on the basis of seniority but other factors such as

ability and experience and all the Claimant had was a legitimate expectation to be considered for appointment to the post of Comptroller of Customs.

22. Legitimate expectation is a species of natural justice which established that a public authority is bound to follow a procedure which it promised to follow or which it held out to a member of the public so long as that procedure did not conflict with the authority's statutory duty. The Privy Council in *Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 stated that it is unfair or inconsistent with good administration for a public authority to act outside of the expectations which are created by some statement or undertaking made by it.

23. In *Philbert Bertrand –v-The Attorney General and the Public Service Commission* it was stated:

*“A person may have a legitimate expectation of being treated a certain way by an administrative authority even though there is no other legal basis upon which he could claim such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation, or from consistent past practice and policy. In all instances the expectation arises by reason of the conduct of the decision –maker and is protected by the courts on the basis of that principles of fairness, predictability and certainty in administration should not be disregarded and that a legitimate expectation should not be disappointed.”*

24. The UK Supreme Court in the decision of *R (Davies) v HMRC* [2011] UKSC 47, [2012] 1 All ER 1048, [2011] 1 WLR 2625 at [49] and [58] held that to create a legitimate expectation:

*“[T]he promise or practice . . . must constitute a specific undertaking, directed at a particular individual or group, by which the relevant policy's continuance is assured”: R (Bhatt Murphy) v The Independent Assessor [2008] EWCA Civ 755, per Laws LJ at 43. The result is that the Appellants need evidence that the practice was so unambiguous, so widespread, so well-established and so well-recognised as to carry within it a commitment to a group of taxpayers including themselves of treatment in accordance with it.”*

25. The Claimant's case here is that his legitimate expectation is based on a settled or established practice. The Claimant argued that the Defendants have by way of a

settled practice interpreted and applied Rules, Regulations and Circulars as giving seniority the principal criteria for appointments or promotions so that the Commission usually promoted the most senior Deputy Comptroller of Customs who was qualified and experienced. The Court must consider whether this expectation raised to the level of a legitimate expectation and not a “mere hope”.<sup>2</sup> The first point to be made here is that regulation 38 does not in fact promote seniority over all else but as can be seen provides a list of criteria, seniority being but one, that the Public Services Commission is required to take into consideration. To satisfy the requirement of such a settled practice the Applicants will have to show that the appointments that have been made in the past were made because of seniority and not by happenstance after applying all the criteria.

26. There is an issue of fact as to whether there was in fact such a settled practice. The Claimant say there was while the Defendants say there was not. The Claimant has not provided any evidence to prove the existence of a settled practice that was clear, unambiguous and devoid of qualification. Who the Commission would have chosen to appoint or promote is a matter for it alone to decide. It was within the Commission’s prerogative pursuant to the regulations to select and appoint who it considered to be the more suitable candidate for appointment to the post. There is no evidence that the Claimant was going to be appointed the Comptroller of Customs by the Public Services Commission by the Commission. I therefore cannot hold that the Claimant’s expectation which I am sure he had was a legitimate expectation.

27. Another argument of the Claimant was that there was a legitimate expectation that the First Defendant consult with the Unions on the decision of the First Defendant to redesignate the post of Comptroller of Customs to an office to which Section 107 applies. The Defendants, on the other hand have submitted that there was no duty to consult - accordingly there could be no legitimate expectation to do so. The Claimant did not pursue this argument in submissions having regard to the fact that the worker’s representatives have not made any objections. In any event I cannot hold there was such an expectation. The Public Services Commission Regulations 2014 Circular Regulation was neither a representation made by the First Defendant that the Union would be consulted when the First Defendant exercises his power under

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<sup>2</sup> See Sedley LJ in *R. v Secretary of State for Education and Employment Ex p. Begbie [2000] 1 W.L.R. 1115*.

Section 107 nor did this redesignation constitute formulating policies and procedures for career and human resource management which involves the workers representatives. As stated before the purport of section 107 was to change the decision maker for specific posts within the Public Service.

28. Notwithstanding the fact that a decision such as this may have brought serious disappointment to the Claimant which I understand, the First Defendant was entitled, in the exercise of his discretion, and pursuant to the law to make such a decision without consultation with him personally. The said Decision was made pursuant to this provision and was therefore lawful and within the ambit of the power of the First Defendant. I note that the effect of the decision would be to remove the position from one which Public Services Commission would normally appoint and so therefore the Public Services Commission the one that is being deprived of that opportunity to appoint naturally would have had to be consulted not the Claimant, a potential occupant of the post. I therefore hold that there was no duty on the part of the First Defendant to consult with the Claimant before arriving at the said decision.

#### *Unfairness and Unreasonableness*

29. Regarding the Claimant's argument that the decision of the First Defendant was unfair and unreasonable and should be vitiated. The standard to be met in deeming a decision unreasonable or unfair was set out by Lord Diplock in *Council of Civil Service Unions & Others v Minister for the Civil Service (1984) 3 All ER 935*. He said a decision of a public authority is unreasonable where it is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." Further, in order to vitiate a decision of a public authority on the ground of unfairness what is required is "conspicuous unfairness."<sup>3</sup>

30. The Claimant submits that in this case the decision is such that it does not on its substantive merits fall within the range of reasonable responses open to the decision maker. I cannot agree with the Claimant that the First Defendant removal of the Comptroller of Customs office from a position under Section 106 to a position under

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<sup>3</sup> Gillette Marina Ltd v Port Authority of Trinidad and Tobago Civil App No 106 of 2003, per Kangaloo JA

Section 107 defies any logic or accepted standards. There is a myriad of reasons why a rational person would exercise such a discretion. In my opinion even if just for the purpose of giving the First Defendant the ability to determine who would be the next Comptroller of Customs is a reasonable rational decision that the First Defendant is entitled to take. The very purpose of Section 107 allows the First Defendant to decide which positions he can determine. In relation to national security another reason indicated by the Defendant for the change. As it related to the first instrument in December 2020, I do not believe that the First Defendant initially had national security in mind but certainly by the second instrument which is the instrument under consideration by this Court, the evidence is that it was clearly within the contemplation of the First Defendant. Therefore, having regard to the information and the evidence of this case, it cannot be said that the decision by the First Defendant at the time to remove the post from Section 106 to section 107 was unreasonable or irrational nor that the decision lacked comprehensible justification. This submission must therefore fail.

### *Bad faith*

31. Fundamental to the legitimacy of public decision making is the principle that official decisions should not be infected with improper motives such as fraud or dishonesty, malice, personal self-interest or bad faith.<sup>4</sup> These motives which have the effect of distorting or unfairly biasing the decision maker's approach to the subject of the decision, automatically cause the decision to be taken for an improper purpose and thus take it outside the permissible parameters of the power.<sup>5</sup> This ground should not lightly be alleged and it is difficult to prove.<sup>6</sup>
32. A power is exercised fraudulently if it is intended to be exercised for an improper purpose to achieve an object other than that which is being sought. The intention may instead be the promotion of another public interest or a private interest. This is the essence of the Claimant's argument on this issue. Bad faith has been defined in an Australian case of *SCA v Minister of Immigration (2002) FCAFC 397 at [19]* to be a

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<sup>4</sup> See De Smith's Judicial Review 8th Edition para 5-095

<sup>5</sup> See De Smith's Judicial Review 8th Edition para 5-096.

<sup>6</sup> *Daihatsu Australia Pty Ltd v Federal Commission of Australia (2001) 184 A.L.R. 576 (Finn J at 587)*; See Fordham, Judicial Review Handbook (3rd ed.) p.751

lack of an honest or genuine attempt to undertake the task. *Daihatsu Australia Pty Ltd v Federal Commission of Australia (2001) 184 A.L.R. 576* it was held that bad faith is a serious allegation which carries a heavy burden of proof. A decision based on malice usually involves some personal animosity.

33. It is one thing to say that the effect of the redesignation was that the First Defendant could appoint someone other than the Claimant to the post but quite another to impute a fraudulent or improper motive as a consequence of that effect without more evidence. In this case the evidence does not remotely lead the Court to the conclusion that the motive of the First Defendant was some ill will towards the Claimant himself but rather the evidence seem to suggest that it was the First Defendant's motive to be able to choose the person who would be the next Comptroller of Customs himself a power granted to under Section 107 and/or to appoint his nominee as the next Comptroller. This submission is therefore also dismissed.

#### *Fair career advancement*

34. The Claimants submitted that he had a legitimate expectation of fair career advancement when the First Defendant advised the Governor General to remove the post of Comptroller of Customs and Excise from the purview of Section 106 of the Constitution and to place it under Section 107 thereby breached his right to equal protection. The Claimant however in paragraph 58 of his submissions indicated that his case was not that he would have been given the post but that he should have been given the opportunity, as similarly situated, to be considered for the post. He argued that he was not given the chance to apply in a way that due process and natural justice would have required. I have already indicated that the Claimant had no legitimate expectation to the post of Comptroller even under Section 106 and there can definitely no legitimate expectation that he would be appointed to the post of Comptroller under 107. In relation to being considered I think it's clear that the Claimant was considered by the First Defendant and the First Defendant preferred someone else, the Interested Party, to fill the post. The meeting between the Claimant and the Financial Secretary made this quite clear.

35. The Claimant further has not put before the Court any authority or facts to suggest that the Claimant had a legitimate expectation that the First Defendant when exercising his authority under Section 107 of the Constitution would be required to adopt any particular procedure. It is for the First Defendant to appoint the person to hold the office and it was within his right to advise the Governor General to appoint the Interested Party to the post.

36. In all of the circumstances of this case I hold that the Claimant's application for Judicial Review is hereby dismissed. Having regard to the change in the instruments after the leave stage and the filing of the Fixed Date Claim which has in my view severely dismissed the Claimant's claim and the public interest this case entail. I hereby exercise my discretion on the issue of costs and make no order as to Costs.

37. I therefore Order that:

- a. The Claimants' Application for Judicial Review is hereby dismissed;
- b. That there be no Order as to Costs.

/s/ WJames

Westmin R.A. James

Justice of the Supreme Court (Ag)