IN THE SUPREME COURT OF BELIZE A.D. 2021

CLAIM NO 43 OF 2021

BETWEEN

IAN HAYLOCK **CLAIMANT/APPLICANT**

AND

PRIME MINISTER OF BELIZE **FIRST RESPONDENT**
ATTORNEY GENERAL OF BELIZE **SECOND DEFENDANT/RESPONDENT**

DECISION ON LEAVE TO APPLY FOR JUDICIAL REVIEW & INTERIM INJUNCTION

Before: The Honourable Mr Justice Westmin R.A. James (Ag)
Date: 9th February 2021
Appearances: Mr Dean Barrow QC and Mr Darrell Bradley for the Applicant/Claimant
Ms Samantha Matute-Tucker and Mr Jorge Mattus for the Respondents
Mr Andrew Marshelleck QC for Ms Estella Berry Ann Leslie

Introduction

1. Appointments in the public service have been controversial and increasingly litigious matters in this jurisdiction, especially after a general election.

2. Lord Wilson in ***Mohammed v Public Service Commission [2017] UKPC 31*** observed that in a relatively small community there is considerable sensitivity about the risk of political influence upon the process of making appointments including promotions of officers in the public service. That sensitivity is very present in this dispute. Section 107 of the Constitution is designed to buttress the independence of the process of such appointments by vesting in the Public Services Commission the power of appointment and insulating its work from interference by the Executive. Notwithstanding that, section 107(2) does give the Prime Minister the power to remove certain offices from the ambit of the Public Services Commission but only after consultation with Public Services Commission.

3. By Notice of Application dated and filed on the 22nd January 2021, supported by affidavit sworn to and filed on even date, the Applicant sought permission of the Court to apply for Judicial Review:

    (i) To challenge a decision of the First Defendant/Respondent 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 30th 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 30th December, 2020 the Governor General of Belize, acting upon the advice of the Prime Minister, appointed Estella Berry Ann Leslie to the post of Comptroller of Customs and Excise with immediate effect.

    (ii) To challenge both Instruments of the Governor General resulting from the advice of the First Defendant/Respondent and to pursue an order of certiorari to quash that advice and the appointment Instruments flowing from it.

4. The Applicant also applied for

    (iii) An interim injunction be granted, until final disposal by the Court of the substantive judicial review Claim, to restrain the First Defendant/Respondent from acting upon, or further acting upon, the Instrument of the Governor General of Belize, dated 30th December, 2020, designating the post of Comptroller of Customs and Excise a 'Constitution Section 107 post': and an interim injunction be granted restraining the First Defendant/Respondent, either by himself or any other officer of his Executive, from giving or continuing to give effect to the Instrument of appointment of Ms Estella Berry Ann Leslie as Comptroller of Customs and Excise. In the alternative, that an interim mandatory injunction be granted to compel the First Defendant/Respondent to advise the Governor General of Belize to suspend the unlawful application of section 107 of the Constitution to the post of Comptroller of Customs and Excise until after the final disposal of the matter by the Court; and to advise the Governor General of Belize to suspend the unlawful appointment of Estella Betty Ann Leslie as Comptroller of Customs and Excise.

(iv) That, until this matter is finally resolved by the Court, a stay of proceedings be granted, staying all actions of the First Defendant/Respondent regarding the designation of, and appointment to the post of Comptroller of Customs and Excise, including any effort or attempt by the First Defendant/Respondent to retroactively consult with the Public Services Commission in trying to cure the procedural defects in the designation and appointment to the post of Comptroller of Customs and Excise being challenged herein.

5. This decision is on the issues of the grant of leave and the Applicant's application for interim relief.

The Applicant's case

6. The Applicant's case was supported by the two Affidavits of the Applicant Ian Haylock. The Applicant deposes that he has served thirty-three years in the Public Service and is the most senior Deputy Comptroller of Customs and Excise. In December 2020 the then Comptroller of Customs and Excise, Colin Griffith, advised the Financial Secretary in writing that he was demitting office and turning over to him 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 21st 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 was going to be promoted to the office of Comptroller of Customs.

8. He contends that without any or any proper consultation with the Public Services Commission consistent with section 107(1) of the Constitution and 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 Applicant indicates that the letter from the First Defendant was sent to the Public Services Commission on Christmas Eve 24th December, 2020 and requesting a response by the 29th December 2020 effectively gave the Commission only one day to respond to the letter since there were two intervening public holidays and a weekend. He argues that one day could not constitute meaningful consultation which is mandatory.

10. The Applicant 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 and 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.

Respondent's case

11. The Respondent through an Affidavit of the Minister of State, Honourable Mr Christopher Coye deposes that there was consultation with the Public Services Commission. He indicated that the Prime Minister sent a letter of consultation to the Public Services Commission dated 24th December 2020 setting out his proposed decision to have the post of the Comptroller of Customs declared as a section 107 post and requested a response no later than 29th December 2020. They allege that the short duration was due to the exigency of having to fill the post by 29th December 2020. Minister Coye has also deposed that to date there has been no response from the Public Services Commission. The Respondent argue that the letter from the Public Services Commission to the Governor General does not disclose any opposition to the request of the Prime Minister to designate the post of Comptroller to section 107.

12. The Respondent also argued that even if the Court were to find that there was not proper consultation in accordance with the Belize Constitution leave should not be granted because the decision taken by the Prime Minister to designate the post of Comptroller to section 107 would have been taken in any event, considering the factual circumstances and so the consultation with the Public Services Commission would have made no difference to the decision to re-designate the post of Comptroller.

13. The Respondents also argued that the essence of the Applicant's claim was a challenge to the exercise of the functions of the Governor-General in designating the post a section 107 post and appointing Ms Leslie to the post was covered by the ouster clause relative to the Governor General and so the matter was not justiciable.

14. Finally, the Respondent content that the interim order sought should not be granted among other things because it would affect national security and pose financial risks to the country. Minister Coye sets out in his Affidavit what a vacancy in the post of Comptroller of Customs would mean for national security for the country and so argued the balance of convenience will lie in not granting the injunctions.

Law

15. It is expedient to address the Applicant's application for leave first. In their joint judgment in **Sharma v Brown-Antoine [2006] UKPC 57** the Privy Council stated what was the test

for the grant of leave to apply for judicial review. At paragraph 4 of the judgment the Board stated as follows:

> *"(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy:* R v Legal Aid Board, Ex p Hughes *(1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in* R(N) v Mental Health Review Tribunal (Northern Region) *[2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability:*
>
> > *"... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*
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> *It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen":* Matalulu v Director of Public Prosecutions *[2003] 4 LRC 712, 733."*

16. This test has been consistently applied by the Privy Council and by Courts around the Caribbean (see, for instance, ***Attorney General of Trinidad and Tobago v Ayers-Caesar [2019] UKPC 44***, paragraph 2, where it is described as "the usual test"; and ***National Commercial Bank Jamaica Ltd v Industrial Disputes Tribunal and Peter Jennings [2016] JMCA App 27***, paragraph [9], where it is described as "the now well-known test for the grant of leave").

Ouster clause

17. The Respondent first raises a jurisdictional issue and contends that the designation of the post was done by the Governor General and by virtue of section 34(4) of the Constitution, the Court cannot enquire into the performance of the functions of the Governor General in this matter. The Respondents argued that the effect of section 34(4) is to oust the jurisdiction of the court from enquiring into the actions of the Governor General and therefore no leave should be granted as the designation and appointment was made by the Governor General. Section 34(4) states:

> *"Where by this Constitution the Governor-General is required to perform any function in accordance with the advice of, or after consultation with, any person or authority, the question whether the Governor-General has so exercised that function shall not be enquired into by any court of law."*

18. Ouster clauses are not an absolute ouster of the Court's jurisdiction. Actions of the Governor General cannot be enquired into once his actions are lawful. A Governor General's actions, like any public body's action to which an ouster clause applies, cannot be protected from judicial scrutiny if they are unlawful. The Constitution must not only be read as a whole, it has to also be given effect to as a whole.

19. It is useful to compare the treatment of this ouster with those dealing with other executive bodies. In ***Thomas v Attorney General [1982] AC 113*** the State contended that the jurisdiction of the High Court to inquire into the matter was ousted by the provision in section 102(4) of the Constitution which stated: *'The question whether–(a) a commission to which this section applies [scilicet the Police Service Commission] has validly performed any function vested in it by or under this Constitution... shall not be inquired into in any court.'* It was held that it was for the court and not for the Police Service Commission to determine what, on the true construction of the Constitution, were the limits to the functions of the Commission. The Privy Council held that if the Police Service Commission had done something that lay outside its powers, such as making appointments to the Teaching Service or purporting to create a criminal offence, section 102(4) of the Constitution would not oust the jurisdiction of the High Court to declare that what it had purported to do was null and void.

20. In ***AG v Joseph (2006) 69 WIR 104*** the Caribbean Court of Justice held the processes involved in the exercise of the prerogative of mercy were amenable to judicial review and the ouster clause in section 77(4) of the Barbados Constitution did not preclude the courts from inquiring into whether the Barbados Privy Council, a decision-making body and a part of the executive arm of Government, had performed its functions in contravention of the fundamental rights guaranteed by the Constitution, in particular the right to procedural fairness.

21. Likewise, the ouster clause with respect to the Governor General cannot trump other provisions of the Constitution if the Governor General acts contrary to them. ***Richardson v AG AI 2006 HC 6*** cited by the Respondent in my view does not support the view that the actions of the Governor General are unreviewable in all instances. In Anguilla, the Constitution gave the Governor the power to appoint, discipline and remove magistrates after consultation with the Judicial and Legal Services Commission. An ouster applied to the exercise of the Governor's functions much like section 34(4). The learned trial judge Bruce-Lyle J said:

> *"It is my view, that I cannot go behind these provisions in Section 28(3) to inquire into the exercise of the Governor's wide powers of discretion as provided for in the said Section unless there is a manifest, glaring and capricious abuse of the exercise of that discretion."*

22. In other words, the Learned Judge accepted that if the Governor General acted unlawfully, he can be reviewed. In that case he went on to look at the evidence and found no evidence of procedural impropriety, and found no reason to 'delve into the actions of the Governor.'

23. In the case of ***CV 2009- 03591Devant Maharaj v Attorney General of T&T*** Justice Boodoosingh (as he then was) examined an ouster clause which applied to acts of the Head of State in Trinidad and Tobago and likewise held that the ouster provision cannot trump other provisions of the Constitution if the Head of State acts contrary to them. He provided examples of why the constitutional framework requires that the unlawful actions of the Head of State must be reviewable.

24. Public officers must remember that their executive authority too is derived from the Constitution so is to be exercised in accordance with the Constitution. When a public officer undermines the Constitution by failing to comply fully with its provisions it can undermine the whole Constitution including their very own office. For example, if after a general election, the Governor General must appoint a member of the House of Representatives who is the leader of the political party which commands the support of the majority of the members of that House to be the Prime Minister. If the Governor General instead appoints the leader of the opposition who does not enjoy majority support, the Governor General would surely be acting unlawfully and an appointment so made can be reviewed.

25. It is accepted that once the Governor General acts consistently with the Constitution, then his actions cannot be challenged. It is in this context the case of ***Re: Blake (1994) 47 WIR 174*** is to be viewed. However, as adopted from the judgment of Justice Boodoosingh in ***Devant Maharaj (supra)*** it could not be that the actions of the Governor General in all

circumstance cannot be challenged in Court. To so hold would undermine the supremacy of the Constitution and provide for supremacy of the Governor General. It would put the Governor General above the law and the Constitution rather than being subject to it. Surely the Respondent cannot be asking the Court to uphold one section of the constitution to the exclusion of all others.

26. In the present case the Governor General can only act on the advice of the Prime Minister after the Prime Minister consulted with the Public Services Commission. As stated in the Commonwealth the case of ***Ulufa'alu v Governor General [2001] 1 LRC 425*** where a Governor-General is obliged to act on advice and he could only act on that advice where it was legitimately given, since advice contrary to law or lacking legitimacy or which was unconstitutional could not be the type of advice contemplated under the Constitution for him to act upon. As stated by Mr Marshalleck, section 127(1) provides conditions precedent for the Governor General to act. Those conditions precedent are the advice of the Prime Minister after that Prime Minister has consulted with Public Services Commission. If the advice of the Prime Minister did not occur after consultation in accordance with the Constitution then that advice to the Governor General would not be legitimate and unconstitutional and therefore would mean the Governor General would have acted unlawfully and his action reviewable by this Court.

27. I would therefore hold that this case is justiciable as the case for the applicant is that the advice was flawed and so does not fall within the ouster clause.

Consultation

28. 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

29. The Constitution at section 129 defines what consultation in the Constitution entails. It states:

> *129.-(1) Where any person or authority is directed by this Constitution to exercise any function after consultation with any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.*
> ***(2) Where any person or authority is directed by this Constitution or any other law to consult any other person or authority before taking any decision or action, that other person or authority must be given a genuine opportunity to present his or its views before the decision or action, as the case may be, is taken.***

30. The case law that speaks to an administrative body's failure to consult where required to is therefore useful. In that regard where a statute imposes an obligation to consult persons affected before a decision or a recommendation is made the Courts have often held that a failure to follow that procedural requirement nullifies the recommendation or decision.

31. By way of illustration, in the case ***Grunwick Processing Laboratories Ltd v ACAS [1978] AC 277*** the House of Lords held that a recommendation on the recognition of a trade union was rendered void because of the failure to consult the workers, in breach of a statutory requirement to do so. In ***Agricultural, Horticultural and Forestry Training Board v Aylesbury Mushrooms Ltd*** [1972] 1 WLR 190 Donaldson J held that a failure to consult, pursuant to a statutory duty to do so, an interested organization in the formulation of an order establishing a training board for the agricultural, horticultural and forestry industry meant that the order had no application to the interested body that was not consulted. Likewise, in ***Bradbury v. Enfield LBC*** [1967] 1 WLR 1311, a Court of Appeal comprising Lord Denning M.R., Danckwerts and Diplock L.JJ restrained, by injunction, a scheme for setting up comprehensive schools because the statute required public notice, the object of which was to give an opportunity to communicate objections to the Minister, and that public notice had not been given. According to Danckwerts LJ it was

> *"imperative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty's subjects. Public Bodies and Ministers must be compelled to observe the law; and it is essential that bureaucracy should be kept in its place."*[1]

[1] page 1325E.

32. Proper consultation requires the "candid disclosure of the reasons for what is proposed"[2] and that the consulted parties are aware of the criteria to be adopted and any factors considered to be decisive or of substantial importance.[3] Where the decision-maker has access to important documents which are material to its determination whose contents the public would have a legitimate interest in knowing, these documents should be disclosed as part of the consultation process.[4]

33. In ***R v North and East Devon Health Authority ex parte Coughlan*** [2001] 1 QB 213, para 108, Lord Woolf M.R., when discussing the importance of consultation, opined:

> *"… whether or not consultation of interested parties and the public is a legal requirement if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."*

34. This therefore shows that it is arguable the time given to the Public Services Commission to respond was not adequate in the circumstances.

35. The Respondent argued that the decision of the Prime Minister was inevitable anyway and so the matter is academic and leave should not be granted. However, it is conceivable that a proposed recommendation or advice may be altered after the receipt of representations from the relevant authority. It was Megarry J in ***John v Rees [1969] 2 All ER 274*** who sagaciously said page 402D that: "*As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not…"* I therefore cannot accept that contention by the Respondents.

36. Consultation is in fact a feature of good governance.[5] The lack of consultation can create dissatisfaction with decision making not so much with the decision itself but with the feeling of disrespect and lack of involvement in a matter which is in the public domain. It also in this situation turns the perception that public offices are political appointments.

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[2] ***R (on the application of L) v Barking and Dagenham LBC [2001] EWCA***
[3] ***R(on the application of Capenhurst) v Leicester City Council 2004 EWHC 2124***
[4] ***De Smith's Judicial Review, 6th Edition, p. 387, para. 7-054***
[5] ***National Carnival Bands Association of Trinidad and Tobago v The Minister of Community Development, Culture and the Arts and Trinidad and Tobago Carnival Bands Association CV2018-03359***

37. The court is entrusted with the responsibility to uphold the Constitution and to jealously guard and ensure that the provisions of same are not violated. Moreover, the Rule of Law uncompromisingly mandates that the exercise of public power under the Constitution must be engaged in a way that is lawful and must operate in a circumstance where there is strict compliance with the Constitution and any other relevant law.

38. I am therefore of the view that in the present matter there are two (2) arguments that might have had some realistic prospect of success. They are the argument that (1) there ought to have been consultation and/or adequate consultation and (2) if there was effectively no consultation then the instruments issued by the Governor General could be null and void. There is no procedural bar to the exercise of the court's power of review of these decisions, and the Respondents have not identified any alternative remedy available to the Applicant.

Determination on Leave

39. I have considered the application, the affidavit filed in support of the application, the grounds of opposition as well as the submissions filed and determine that leave is granted for the Applicant to seek judicial review of the decision of the First Defendant/Respondent 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 30th 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 30th December, 2020 the Governor General of Belize, acting upon the advice of the Prime Minister, appointed Estella Berry Ann Leslie to the post of Comptroller of Customs and Excise with immediate effect.

40. Leave is also granted to the Applicant to challenge both Instruments of the Governor General resulting from the advice of the First Defendant/Respondent and to pursue an order of certiorari to quash that advice and the appointment Instruments flowing from it.

Interim Injunction

41. The principles governing the grant of an interim injunction in judicial review proceedings are quite helpfully laid out in the case of ***Chief Fire Officer and Public Service Commission v Elizabeth Felix-Phillip and 37 others*** Civil Appeal No. S 49 of 2013 which provides:

(i) The ***Cyanamid*** guidelines are applicable to cases in public law

(ii) The threshold for an applicant for interim injunctive relief is to show that there is a serious case to be tried. The Court can then address itself to the question whether it is just or convenient to grant an injunction.

(iii) As a general rule, in cases of this nature involving the public interest, it will be necessary for the Court to proceed directly to the issue of balance of convenience or balance of justice as it is now called. This is because questions arise as to whether it may be appropriate to impose the usual undertakings in damages as a condition for the grant of an injunction. Moreover, there is no general right to damages for loss caused by invalid administrative action. Further, a public authority acting in the public interest cannot normally be protected by a remedy in damages because it will itself have suffered no quantifiable loss.

(iv) It will not be in every application for judicial review that a Court may be required to proceed directly to the balance of convenience. Much will turn on the facts of the case.

(v) In cases in which a party is a public authority performing duties to the public, the balance of convenience must be looked at more widely and must take into account the interests of the public in general to whom these duties are owed.

42. Interim relief is granted when the court considers that it has a duty, where appropriate, to ensure that any order made on the eventual hearing of the matter would be rendered nugatory.[6]

43. In relation to whether there is a serious issue to be tried, the grant of permission is a starting point but it is by no means the case that interim relief will be appropriate just because permission has been granted. However, it was my determination that there is a serious issue to be tried in the Applicant's proposed Claim for all the reasons stated above. The question of the adequacy of damages is not relevant here as none are being sought by the Applicant.

44. Accordingly, the focus of my determination as to whether to grant the interim relief claimed focussed on the balance of convenience and justice. In this regard I paid particular attention to the fact as highlighted by Bereaux, JA in ***Chief Fire Officer*** that *"In cases in which a*

[6]***Belize Alliance of Conservation Non-Governmental Organisations v The Department of the Environment and Belize Electricity Company Limited Privy Council Appeal [2003] UKPC 62*** per Lord Walker at para 33

party is a public authority performing duties to the public, the balance of convenience must be looked at more widely and must take into account the interests of the public in general to whom these duties are owed." This was also stated in ***Smith v Inner London Education Authority [1978] 1 All ER 411*** where Lord Justice Browne, sitting in the English Court of Appeal said this:

> *" ... I think counsel for the authority is right in saying that where the defendant is a public authority performing duties to the public one must look at the balance of convenience more widely, and take into account the interests of the public in general to whom these duties are owed. I think this is an example of the 'special factors' affecting the balance of convenience which are referred to by Lord Diplock in American Cyanamid."*

45. In ***R v Secretary of State for Transport, ex parte Factortame Ltd (No 2) [1991] 1 A.C. 603*** Lord Goff considered the public interest considerations in this way:

> *" ... particular stress should be placed upon the importance of upholding the law of the land, in the public interest, bearing in mind the need for stability in our society, and the duty placed upon certain authorities to enforce the law in the public interest. This is of itself an important factor to be weighed in the balance when assessing the balance of convenience."*

46. This is why in ***R v MAAF, ex p. Monsanto [1999] Q.B. 1161*** the Court emphasised that there is a strong presumption against interim relief in public law matters because it is in the public interest that decisions of public bodies are respected unless, and until, they are set aside.

47. A common thread throughout the cases is that the decision to grant or refuse interim relief in public law matters is at the discretion of the Court, taking into account all the circumstances of the case. Lord Walker in ***Belize Alliance*** at para 39 put it this way: *"Both sides rightly submitted that (because the range of public law cases is so wide) the court has a wide discretion to take the course which seems most likely to produce a just result (or to put the matter less ambitiously to minimise the risk of an unjust result)."*

48. It was argued on behalf of the Applicant that the balance of convenience and justice could only be determined in favour of the grant of the interim injunctions claimed since that the public interest would be in upholding the law. Counsel for the Applicant said that there could be no inconvenience or prejudice to the public interest if the injunctions were granted and it were later found that there had been no failure on the part of the Respondents. Counsel for the Applicant further submitted that the Respondents failed to provide any

evidence by way of Affidavits on the balance of convenience. Accordingly, it was argued there was no evidence of any possible public interest against granting the interim relief.

49. In response counsel for the Respondents asked the Court to take into account the multifaceted impact of the orders claimed being made. The Respondent cited paragraphs in the Affidavit of Minister of State Christopher Coye which revealed that the Comptroller of Customs is part of the heads of law enforcement institutions that collectively address national security concerns. It was further pointed out that the Customs Department is responsible for enforcing border security for the country of Belize through coordinated intelligence operations with the Belize Police Department, the Belize Defence Force, and the National Coast Guard. Further the Customs Department is responsible for the collection of significant revenues for the Government of Belize, and at present is responsible for the collection of more than 45 percent of the Government of Belize's recurrent revenues. The argued that the position of Comptroller of Customs' remit is one of national importance. The Affidavits goes on to indicate that an interim injunction would result in a vacancy at the very top for an unknown period of time. He deposes that an unfilled vacancy puts at risk the border security and the food security of the nation and increases the risk of contraband and smuggling to occur.

50. The Court does take judicial notice that the post of Comptroller of Customs does involve national security considerations and therefore the public interest could be affected if there is a vacancy. The last occupier of the post tenure has expired and Ms Harry who was appointed on 30th December 2020 has been acting in the post since at least 1st February 2021.

51. In considering the interests of the public and how the grant of injunctive relief could impact on the performance of duties of the Customs Department, I was persuaded by the submission of counsel for the Respondent that due deference should be accorded to the fact that the duties of the office concerned are in the sphere of national security.

52. An interim injunction prohibiting an office holder from exercising the powers of a position leaving the position vacant should not be made prematurely as it could impact not only on the officer holder but the public and the administration of the state. The position of Comptroller involves a a number of interlocking and interacting public interests, logistical and security considerations in the administration of the Customs Department. Accordingly, it could only be on very sound evidence that any decision should be made by a court as that would impact on administration of the Customs Department, the public interest and national security. I find that the balance of convenience and justice, when the public interest and the interests of national security and good administration were taken into account, weighed against the injunctive orders sought being granted as interim measures before

consideration of comprehensive evidence and submissions at the substantive hearing of the judicial review claim. It will not be in the public interest to upset the appointment in the absence of a good reason for doing so since to do otherwise would be disruptive in that it would give rise to uncertainty and delay in the exercise of the functions of the Customs Department.

53. Further, I also conclude that notwithstanding the strength of the case made out by the Applicant, the balance of convenience leans against granting the injunctions because there is no risk of injustice to the Applicant. The Applicant is not seeking to have himself or anyone to be able to be appointed in the position in the interim. Additionally, during the course of submissions, Mr Barrow, on behalf of the Applicant, agreed that the Applicant will not suffer any prejudice. He then argued that if it was not granted it would affect his reputation. The Court did not follow this argument since if he has been given leave to challenge the appointment. Therefore, in adopting this course there is no risk of injustice to him.

54. The Applicant also argued relying on the decision of ***Kutlu v Director of Professional Services Review [2001] FCAFC 94*** it would be in the interest of justice that the injunction be granted since if they are successful that all decision of the current Comptroller would be rendered void. I do not agree with the submission of the Applicant on this point. Decisions made by an office holder are valid unless declared void by the Court. There are further alternative mechanisms available to the State if decisions are made by an officer holder whose position was subsequently held to be invalid.

55. In these circumstances I will not grant the interim injunction as claimed in the Applicant's application but I will however expedite the hearing of this case.

56. Since the Applicant was successful in part and not successful in another, I would not award any costs of this application.

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Westmin R.A. James
Justice of the Supreme Court (Ag)