

IN THE SUPREME COURT OF BELIZE A.D. 2022

Claim No. 33 of 2022

Between

The Rt. Honourable Dean Barrow

Claimant

And

Edmund Andrew Marshalleck Jr.

1st Defendant

Luke Martinez

2nd Defendant

Marcello Blake

3rd Defendant

Attorney General of Belize

4th Defendant

BEFORE THE HONOURABLE JUSTICE LISA SHOMAN

HEARING DATE: April 6th, 2022

WRITTEN SUBMISSIONS:

Claimants: March 18th, 2022, and April 1st, 2022

Respondents: March 29th, 2022 and March 30th, 2022

APPEARANCES:

Ms. Naima Barrow for the Claimant

Godfrey Smith SC and Mr Hector Guerra for 1st - 3rd Defendants

Douglas Mendez SC & Ms. Iliana Swift for the 4th Defendant

JUDGEMENT

1. The Claimant challenges the validity of the findings and Report of the Commission of Enquiry (“the COI”). of which the first three Defendants were members, by Fixed Date Claim Form dated 25th February 2022. The 4th Defendant is the Attorney General of Belize. The Claimant also claims that his right to “equal protection” under law was infringed, and claims damages including vindicatory damages and costs.

2. The Claimant’s claims regarding the findings and the Report of the COI are also found in the Application for Permission to apply for Judicial Review dated 19th January, 2022 (“the Application”), his First Affidavit accompanying that Application sworn to on 19th January 2022, his Second Affidavit sworn to on 25th February, 2022 and Third Affidavit are for :
 - i. A declaration that the findings and Report were made in consequence of a Commission of Inquiry process that was ultra vires, procedurally improper, violative of the Claimant’s natural justice rights and violative of the Claimant’s Constitutional right to equal protection under law; that those Findings and Report are therefore void and a nullity.
 - ii. An order of certiorari quashing the Findings and Report of the Commission.
 - iii. An order or prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission.
 - iv. A permanent Injunction restraining the Government of Belize, its servants, agents, departments, authorities and officials, from implementing or acting upon the Findings and Report of the Commission.
 - v. Redress for the contravention of the provisions of the Belize Constitution, Cap. 4, Revised Edition 2011 (“**the Constitution**”).
 - vi. Costs.

vii. Such further or other relief as may be just.¹

3. The grounds upon which the claim is brought, can be summarized as follows:

- i) The COI exceeded its jurisdiction in indicting the Applicant in the manner and terms it did, and in implying/expressly stating that the Applicant had committed crimes against the Finance and Audit Act (“the FARA”) and that he had suborned corruption on the part of the former President of the Court of Appeal;
- ii) Actual or apparent bias of the First Respondent arising from his relationship with the Prime Minister of Belize who appointed the Commission, and the alleged fact that the First Respondent is a public opponent of those he was appointed to investigate and a personal and professional partisan of those who appointed him to carry out the investigation.²
- iii) The Commission violated the Claimant’s natural justice and constitutional rights by failing to notify the Claimant of the nature and purpose and extent of the COI by issuing a Salmon Letter, to advise that he had a right to be represented, to provide prior notice of documents on which they intended to rely, by relying on evidence outside the scope of the Commission and to give him an opportunity to respond to the findings adverse to the Claimant, which were contained in the Report³ (paragraphs 34-46 of the application; paragraphs 8-11 of the first affidavit).

4. The 1st – 3rd Defendants in this Claim concede and accept that the Claimant is entitled to declarations that the Defendants breached his right to natural justice and his right to protection under the law, and to an order that the Claimant be paid damages, if any, to be assessed, such damage to be paid by the 4th Defendant.

¹ Claimant’s Submissions in support of Claim for Judicial Review at Paragraph 6

² Ibid, paragraphs 31-32; Claimant’s First Affidavit dated January 19 2022 at paragraphs 21-36

³ Ibid, at paragraphs 34-46; Claimant’s First Affidavit dated January 19 2022 at paragraphs 8-11

5. The Claimant is awarded \$125,000.00 Belize Dollars as redress for compensatory damages and \$60,000.00 Belize Dollars in vindicatory damages for the reasons provided below. The Defendants have all agreed that damages are to be paid by the 4th Defendant.

6. Did the Commissioners embark on a process that was Ultra Vires? Despite the myriad admitted failures of the COI with regard to the natural justice and constitutional rights of the Claimant, which will be redressed by awards in damages, the process of the COI was not ultra vires the remit, which remit was in conformity with the statutory requirements under the laws of Belize.

7. This Court finds no actual or apparent bias on the part of the First Defendant nor the Second, and finds that the COI report and findings were not tainted with bias.

8. There is no doubt that the Claimant was denied his natural justice rights and his constitutional right of protection under the law but the Court does not order that the entire COI Report be quashed, for the reasons provided below. The Court orders that those findings of the COI Report which tend to prejudice, or are adverse to the Claimant shall be expunged in their entirety from the Report, as set out below. Some sections of that report were already by consent excised in Claim No. 29 of 2022.

9. The Court will not make an order of prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission, nor order a permanent Injunction restraining the Government of Belize, its servants, agents, departments, authorities and officials, from implementing or acting upon the Findings and Report of the Commission.

10. Costs will be awarded to the Claimant as set out below.

A. DAMAGES FOR INFRINGEMENT OF CLAIMANT’S RIGHTS

11. The Written Submissions made on behalf of the Attorney General accepts that the Claimant had no notice of and therefore no opportunity to respond to the findings made by the Commission in the sentences/paragraphs set out below, and the 4th Defendant therefore accepts that it would be appropriate for the Court to order a declaration that the Claimant’s constitutional rights to the protection of the law has been infringed, and that damages should be paid.

- i) Paragraph 12, lines 6 to 9, from “it was clear to the Commission” to “Minister of Finance”;
- ii) Paragraph 13, lines 7 to 9, from “In fact, most purchasers” to “favourable consideration”; lines 17 to 21, from “The overall result” to “transparent way”;
- iii) Paragraph 14 – lines 7 to 9, from “nor were” to “waste and abuse”;
- iv) Paragraph 15 – the entire paragraph;
- v) Paragraph 22 – the entire paragraph;
- vi) Paragraphs 67-72 – the entire paragraphs;

12. Since the Parties are in agreement that the Claimant’s natural justice and constitutional rights of protection of the law were infringed and violated by the COI; and that declarations to that effect should be made; the matter of what damages if any should be awarded to the Claimant, is the first order of business for this Court. The Claimant offers submissions which concede the applicability of the authorities and principles in relation to the award of damages submitted by the 4th Defendant. Where the parties part ways is on the matter of the application of those authorities and principles to the facts of this Claim and the evidence of this Claimant.

13. The Claimant claims compensation for distress and the injury to his reputation caused by the publication of the Report. He also claims an award of vindictory damages for the breach of his constitutional rights.

The Distress and Injury

14. The 4th Defendant while conceding that awards made in defamation cases may be used as a guide, does point out that the award made to the Claimant in those cases, is an award for the attack on the Claimant's reputation, as opposed to an award for the distress suffered; and submits that an appropriate award in this case for such distress and injury to feelings in this claim, would be "in the range of \$30,000.00 Belize Dollars to \$50,000.00 Belize Dollars."⁴
15. What was the distress suffered by the Claimant and the resulting injury? The Claimant provides this Court with ample evidence in his First Affidavit dated 19 June 2022; in his Second Affidavit dated February 25, 2022; and his Third Affidavit dated March 10, 2022 of the impact on him, and resulting injury to him, of what the Claimant's Counsel calls "*blazingly public nature of the Commissions' inquiry.*" In a Press Release issued by the Government of Belize and dated January 11, 2022, the COI's "key findings" were detailed and that Press Release was disseminated by the media and widely discussed by the general public.
16. The Claimant provides evidence that "he became extremely distressed" at what the Report said about him.⁵ He also says that he was "*greatly shocked when he heard and read what the Commission said about me in the Report*".⁶

⁴ Written Submissions of the Attorney General dated March 30, 2022 at Paragraphs 67 and 68

⁵ First Affidavit of the Claimant at paragraph 14

⁶ Second Affidavit of the Claimant at paragraph 18

17. The Claimant also deposes that he was “*appalled that the Commission... could ambush me in the manner of the Report. The Commission savaged me to the point of saying I had committed criminal breaches of the law.*”⁷ He goes on to say that he was “*utterly blindsided by the Report and felt that its findings and publication without my ever having had a chance to make representations to protect my name, character and reputation, constituted a blatant violation of my fundamental constitutional right to protection of the law.*”⁸
18. In his Second Affidavit, the Claimant described that the “*Report of the Commission, extensively covered by the media in Belize and the subject of a torrent of public discussion, has caused me severe anguish.*”⁹
19. The Claimant deposes that he believed that “*the Report must have damaged me with friends, clients and colleagues.*” He goes on to say that “*It is, of course impossible to calculate the extent of the injury.*”¹⁰
20. The Claimant says he had to explain to his teenage daughter why, he was still being attacked when he had left public life, and was still being subjected to a Report “*that viciously attacked me*”¹¹ and that he has had to ask associates in Belize and abroad not to be swayed by the Report “*that has been manifestly unjust to me.*”¹²

⁷ Ibid, Paragraph 19

⁸ Ibid, paragraph 19

⁹ Ibid Paragraph 21

¹⁰ Ibid, Paragraph 22

¹¹ Ibid Paragraph 23

¹² Ibid, Paragraph 24

21. The Claimant affirms that *“It is terribly injurious for me to have to make such protestations to cushion the effects of the Report.”*¹³
22. In his Second Affidavit, the Claimant testifies that his treatment at the hands of the Commission has caused him *“much private and professional harm and humiliation”*¹⁴; and claims *“It is as though I have been found guilty of crimes without ever having been charged.”*¹⁵
23. Since this Court is called upon to make an assessment of the damage caused to the Claimant, it is necessary to list the exact nature and extent of the distress and injury which the Claimant claims was caused to him by the COI Report, in weighing what compensatory damages ought to be awarded. It is noteworthy that the Defendants did not attempt to challenge or controvert the Claimant’s evidence in this regard.

How to Measure Damages?

24. In fact, the written submissions for the 4th Defendant do concede that, *“The Attorney General respectfully submits that the Claimant is entitled to an award of compensation for the distress and inconvenience suffered as a consequence of the failure to accord him a right to answer the criticisms levelled at him. The level of distress he experienced is no doubt influenced by the reputational damage he suffered.”*¹⁶

¹³ Ibid, Paragraph 25

¹⁴ Ibid Paragraph 26

¹⁵ Ibid Paragraph 27

¹⁶ Written Submissions of the Attorney General at Paragraph 64

25. This concession, brings in an added component for consideration by the Court – that the damage suffered may also take account the Claimant’s reputation when assessing the damage suffered.
26. It is not that the quantum of damages which ought to be paid is directly affected by the stature, standing or reputation of the Claimant per se. Indeed, as the 4th Defendant puts it, “...*the Court must be careful that the award made to the Claimant does not become an award for the attack on his reputation as opposed to an award for the distress suffered.*”¹⁷
27. The damage suffered does not entitle any Claimant to a bigger award because that Claimant is perceived to be “broader than Broadway” –but the reputation of that Claimant, (if there is such evidence) is a factor in assessing damage for distress caused or injury to “reputational damage” (as the 4th Claimant terms it) whether that reputation be stellar, or in the cellar.
28. In this Claim, the Claimant took great pains in his Second Affidavit, and in particular in paragraphs 5, 6, 9 and 13 to set out the elements of his reputation as a public and private individual, Attorney, Minister of Government, Minister of Finance, and Prime Minister. This Court may take judicial notice that the Claimant is also Senior Counsel of many years standing, and is a member of the Privy Council appointed by our constitutional monarch in 2016 and like three other former Prime Ministers of Belize, is entitled to the style of “Right Honourable”. None of this evidence is controverted or challenged.
29. The Attorney General submits that in assessing the level of the award to which the Claimant is entitled, “...*it is to be noted that the Claimant no where seeks to refute the underlying (sic) findings of fact on which the criticisms are based, viz., that sales were made at undervalue to selected persons who purchased in other persons’ names. The Claimant premises his claim on*

¹⁷ Ibid at Paragraph 67

*the assumption that he has answers to these criticisms which he would have provided had he been asked, but he does not actually provide those answers.”*¹⁸

30. As in the recent case of **Patt v. Edmund Andrew Marshalleck et al**¹⁹, I reject any notion that this Court should find that the Claimant needs to, or should refute the findings of the COI Report, as a basis for the assessment of an award of compensation for what the 4th Defendant has already conceded is “*for the distress and inconvenience suffered as a consequence of the failure to accord him a right to answer the criticisms levelled at him.*”
31. It can be no part of the exercise of this assessment of damages, to expect answers to anything contained in a COI Report that has denied this Claimant’s constitutional or natural justice rights, nor should a judge take note that the Claimant has not done so. There is no onus in law that obliges the Claimant to provide answers, whether in denial or in confirmation to the very Report issued by a Commission, which the 4th Defendant has already accepted, breached the Claimant’s constitutional rights.
32. All sides agree that, “*In assessing the award to which he is entitled it is also important that the Court have regard to awards made in other comparable cases and to ensure that there is some level of parity with cases of other types. Indeed, it is a fundamental principle of fair assessment of damages that awards made in any case should bear a reasonable relationship to awards made in comparable cases.*”²⁰
33. The 4th Defendant drew to the attention of the Court to two cases in which damages were awarded – the first is **Crane v. Rees**²¹ in which the Court of Appeal of Trinidad and Tobago addressed the

¹⁸ Ibid

¹⁹ Claim 29 of 2022

²⁰ Written Submissions of the Attorney General, paragraph 65

²¹ (2000) 60 WIR 409

question of compensation for damage to Justice Crane in 2000, in which an award of TT \$125,000.00 (the equivalent of US \$20,000.00) was made. That was 22 years ago.

34. The relevant position in **Crane v. Rees** is extensively set out in the following passages:

At p. 421

*“I do not read the judgment of either the Court of Appeal or the Privy Council as directing the judge simply to assess damages for loss of reputation and other alleged losses without more. Damages for breach of one’s fundamental rights are not as of right. Section 14(2) gives the court a discretion as to which relief it considers appropriate, including relief in the form of monetary compensation. In this case, there was a clear exercise of that discretion that compensation be assessed. **In order to determine the amount, however, the appellant would have to furnish facts from which distress and inconvenience could be determined and, in addition, prove the pecuniary loss suffered as a result of the breach. Damages are not at large in this latter regard.**”* (Emphasis added)

At pp. 425-426:

“As regards the claim for loss of reputation, I have already indicated that damages per se for such loss are not available in this case. It is not a claim in tort for common-law damages. It is one in public law for monetary compensation for breach of one’s constitutional right. But that having been said, I do not accept that the question of reputation should be ruled out altogether. It must be a factor that has to be taken into account in determining the distress and inconvenience suffered by the appellant. The right to be heard is not simply an abstract right that exists in a vacuum. It serves a purpose, and a very significant one at that. It protects a citizen against any arbitrary act of the State or its agents by ensuring that he is heard before any action adverse to him is taken. In doing so one’s reputation is protected. The right would be meaningless, in my view, and of little value to a citizen if it could not protect him in this way. I think that this view is borne out in the opinion of the Privy Council as regards the injury to the appellant’s reputation.

It cannot be doubted that injury to one’s reputation will generally have an effect on the victim in that, amongst other things, it will cause him distress and grief. The fact that distress is also an ingredient that is taken into account in an award in defamation at common law should not, in my view, preclude a court in a constitutional matter from taking that very distress into account. The fact that there may be some overlap is of no consequence. I have already demonstrated the central role of injury to reputation in this matter. Further, when considering the distress and anxiety suffered by the appellant, it is difficult to disregard the concerns expressed by both the Court of Appeal and the Privy Council.” (Emphasis added)

35. The 4th Defendant also makes reference to the recent Belizean case of **Bevans v Briceno**²² and respectfully submits that an appropriate award in this case for distress and injury to feelings would be in the range of \$30,000.00 Belize Dollars to \$50,000.00 Belize Dollars.²³
36. The Claimant’s written submissions refer this Court to **Barron MP & Ors v. Collins MP**²⁴ in which one member of a political party was ordered to pay another member of an opposing party the equivalent of \$128,900.00 Belize Dollars for defamatory statements in a widely publicized speech.
37. The Court is also referred, as a guide to the quantification of damages to the Trinidad and Tobago Industrial Court case of **Sam Maharaj v. Patrick Augustus Mervyn Manning**²⁵ where a former judge of Trinidad’s Industrial Court who did not receive a response from the Attorney General or Cabinet to his request for reappointment, was awarded TT\$125,000.00/US\$18,450.00 for the distress and inconvenience suffered and TT\$600,000.00/US\$88,560.00 as vindicatory damages being an additional award to deter the committing of similar breaches as that which occurred.

²² Claim No 771 of 2020, 30th August 2021

²³ Written Submissions of the Attorney General Paragraph 68

²⁴ [2017] EWHC 162

²⁵ TT 2019 HC 26

38. The Claimant also refers to the Belizean case of **Melissa Belzaira Tucker v. Chief Executive Officer, the Minister of Education & the Attorney-General**²⁶ in which Ms. Belzaira Tucker was an Open Vote worker with the Ministry of Education who was awarded compensatory damages of \$80,000.00 Belize Dollars. Counsel for the Claimant urges the Court to make an order in these circumstances, presumably inclusive of vindictory damages in the sum of \$450,000.00 Belize Dollars.
39. The 4th Defendant has agreed that any damages awarded shall be paid by the Attorney General. Having due regard to all the attendant circumstances in this case, the unchallenged evidence of the Claimant as to the distress suffered and the injury admittedly caused, the sum of \$125,000.00 Belize Dollars is awarded to the Claimant as compensatory damages.

Vindictory Damages

40. Written Submissions for the 4th Defendant concede that, “What the Report does is to accuse him of “an unbridled exercise of power” (para 12); of “handpicking purchasers” (para 13); selling to “favoured persons” at less than market value (para 13); “waste and abuse” (para 14); facilitating the purchase of vehicles by persons with political connections but using the names of other persons to conceal their involvement (para 15); breaches of the law which very likely constituted criminal offences (para 2); favouritism towards the President of the Court of Appeal in the sale of a vehicle far below market value (paras 67-72).”²⁷

²⁶ Claim No. 305 of 2014 and Claim No. 199 of 2015

²⁷ Written Submissions of the Attorney General Paragraph 63

41 It is in all the circumstances, appropriate to award vindictory damages in this case. I take guidance from a JCPC case commended for my consideration by the 4th Defendant's Written Submissions²⁸ **Attorney General v Ramanooop**²⁹, where the JCPC Board discussed the various awards as follows:

*“[19] An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. **An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.** All these elements have a place in this additional award. ‘Redress’ in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions ‘punitive damages’ or ‘exemplary damages’ are better avoided as descriptions of this type of additional award.”* (Emphasis added)

42. There is, in the admitted and attendant circumstances of this claim, a need to emphasise the importance of constitutional rights and the gravity of the breach caused to the Claimant's rights and to deter future breaches. The sum of \$60,000.00 Belize Dollars is awarded to the Claimant as vindictory damages, which I believe meets the justice of the case.

²⁸ Ibid at Paragraph 71

²⁹ (2005) 66 WIR 334

B. EXCESS OF JURISDICTION

43. The Claimant claims that the COI exceeded its jurisdiction in indicting the Applicant in the manner and terms it did, and in expressly and impliedly stating that the Applicant had committed crimes against the Finance and Audit Act (“the FARA”) and implied that that he had suborned corruption on the part of the former President of the Court of Appeal;³⁰
44. The core contention is that the Terms of Reference of the Commission was ultra vires because it changed the commissioners with determining legal liability when the central purpose of the COI was to inquire, collect information and report.
45. The Claimant also claims that the Commission exceeded its jurisdiction by considering evidence about matters outside the scope of its TORs and remit.
46. The Parties agree that the remit of the COI under the Commissions of Inquiry Act, Chapter 127 of the Laws of Belize was to inquire into those matters for which they were appointed, to collect information and report the result of the collection to the Prime Minister. That is where the consensus ends.
47. The Claimant claims that the language of the Terms of Reference (TORs) of the COI is “contrary to clear confines of the Act, the Commissioners were charged with determining legal liability when they were authorized to determine, inter alia, whether:
- (i) regulations were duly observed
 - (ii) there was any fraud, and/or

³⁰ Application for Permission to apply for Judicial Review dated 19th January 2022 at paragraphs 23-27 and Written Submissions in Reply to the 4th Defendant’s Submissions, paragraph 19

(iii) there was any corruption”.³¹

48. The Claimant submits that, “that a commission of inquiry is not the suitable body to determine breaches of regulations, the presence of fraud and/or the corruption of any public officer as

(i) regulations are made under the authority of law;

(ii) fraud is a criminal offence under the Criminal Code; and

(iii) corruption is also a criminal offence under the Criminal Code.”³²

49. Counsel for the 1st to 3rd Defendants makes short work of these matters complained of, submitting that “an examination of the TOR, audited against the Act, will show that this ground cannot succeed. The scope of what a prime minister may issue a Commission of Inquiry to inquire into is broad and open-ended. Section 2(1) (d) states it may inquire into “*any other matter in which an inquiry would, in the opinion of the Prime Minister, be for the public welfare.*” *There is nothing in the Act that limits the scope of its inquiry as exists in other commissions of inquiries legislation in other jurisdictions. If parliament intended to limit its scope, it would have so done.*”³³

50. This Court, having been provided with other Commissions of Inquiries Act³⁴ from Caribbean Jurisdictions, agrees with that contention.

51. I also agree with the Submissions for the 1-3 Defendants that, “*the question of whether a Commission of Inquiry is a suitable body to inquire into whether there have been breaches of law or corruption is not a complaint cognizable in the circumstances of this case. Parliament has enacted the Act and until it is declared unconstitutional, it remains valid and enforceable. The claimant has not pleaded unconstitutionality.*”³⁵

³¹ Claimant’s Submissions in Support of Claim for Judicial Review at paragraph 56

³² Ibid, paragraph 57

³³ Submissions for the 1-3 Defendants Paragraph 19.

³⁴ St Christopher and Nevis, Chapter 3.03 and St. Vincent and the Grenadines Chapter 20

³⁵ Submissions for the 1-3 Defendants Paragraph 20.

52. I therefore accept the contention that the “...*Commission was properly issued, its members properly appointed and witnesses properly summoned. The Commission embarked on a process that was well within the Act.*”³⁶
53. What of the findings of the COI? The Claimant says that the COI purported to make findings which “...*usurped the province of regular courts in violation of the provisions of the Constitution.*”³⁷
54. A review of the findings of the COI is necessary, and the summary provided by Counsel for the 1st – 3rd Defendants is helpful³⁸. Those submissions argue that the Commission made no finding of criminal or civil liability against the Claimant as follows:
- a. “The statement at para 12 of the Report that “the explanations sought to obscure what was a completely unbridled exercise of power by the former prime minister” is not finding of criminal or civil liability.
 - b. The finding at para 14 that “*the sales all reflected the mismanagement of public resources and clearly involved waste and abuse*” is not a finding of criminal or civil liability.
 - c. The speculation at para 16 that, “*this may possibly have facilitated the use of the sale of a motor vehicle to former Deputy Prime Minister Hugo Patt to launder the proceeds of a bribe ...*” is not a finding of civil or criminal liability.

³⁶ Ibid Paragraph 21

³⁷ Claimant’s Submissions in Support for Claim for Judicial Review, Paragraph 62

³⁸ Submissions of the 1-3 Defendants , Paragraph 22

- d. The statements at paras 17-20 that members of the National Assembly who entered into contracts for purchase of government vehicles “were likely” disqualified from continuing to sit is not a finding of any civil or criminal liability.
- e. The statement at para 22 that the “violations of financial laws in the sale of government assets were so routine ... very likely constituted actionable criminal offences at the material times” is not a finding of criminal or civil liability. Indeed, in the ensuing para 23 the Commission states that the relevant limitation periods for any criminal action are long since expired and that purchasers were unwittingly caught up in the illegal purchases.
- f. The recommendation at para 26 is for further investigation into “any connection” between the sale of the vehicle to Hugo Patt and land sales to Li and that action be taken by the Clerk National Assembly to determine qualification to sit. This is not a finding of criminal or civil liability by anyone.
- g. Paras 66-72 which speak to the “gifting of public assets to favoured public officials including a senior judge and a number of government ministers” and characterizes these sales as “favouritism” and raising significant concerns about why the judge was being favoured by the prime minister at the public expense, cannot amount to findings of criminal or civil liability.
- h. Paragraphs 81-97 (which address the Tacoma) speculate at para 96 that the payment was either a bribe for past approval of land or a share of profits from an unlawful scheme. This is clearly speculation and, in any event, in the next para the report states that, “*in any case the transactions and payments so described come within the definition of money laundering so that the matter obviously requires further investigation...*” (Underlining added) These are not findings of civil or criminal liability.

- i. Para 106 states the “misconceived process for effecting sales may have further allowed sales to be used in aid of corrupt acts and to launder proceeds of crime”. Again, this is very clearly not a finding of any kind of liability.”

55. The language used by the COI Report is stinging, pungent even, but it manages to skirt making any findings of criminal or civil liability per se, while urging further investigation. I find as a matter of fact, that the COI and its ensuing report did not exceed its jurisdiction by purporting to usurp the jurisdiction of the “regular courts”. I also accept that there is no express finding by the COI that the Claimant suborned the President of the Court of Appeal; but the Report does make certain findings in this regard which will be quashed since they are violative of the rights of the Claimant.

56. Did the Commission exceed the terms of its jurisdiction by considering evidence of matters outside the scope of its Commission? The Claimant says that it did, alleging “*that Commission confirms that it requested the record about a judge’s salary and in so doing confirms that it relied on material not connected to the sale of assets*”³⁹. I would agree with the submission made on behalf of the Claimant in respect only of this limited point.

57. The COI was, by all parties agreed to be about the sale of government assets during the period October 2019 to November 2020 and “determining whether any improprieties irregularities or wrongdoing occurred in the sale of such assets and to recommend any corrective measures and necessary actions against those involved.”⁴⁰

58. In fact, the COI Report at Paragraph 5 says that it confirmed that the Commission was not intended to look into sales of lands by the Government” and specifically clarified that the inquiry was “...limited to investigating the sale of moveable chattels being primarily the sale of motor vehicles”;

³⁹ Claimant’s Submissions in Support for Claim for Judicial Review, Paragraph 64

⁴⁰ Government of Belize Press Release PR#010-22

yet the COI Report admits that the COI “...however, nonetheless investigated the sales of lands to the extent that they were connected to the sale of government vehicles and also looked in a limited way into the sale of livestock.”⁴¹

59. This is an illuminating excerpt, but it does not address why the COI needed to have recourse to the Salaries Register for the President of the Court of Appeal showing all payments made to him.
60. The 1st Defendant, however, helpfully deposes that, “*The Commission inquired of the Minister of State in the Ministry of Finance of the payments made to President Sir Manuel Sosa during the relevant time and was provided with a Salaries Register for the judge showing all payments made to him. The register showed not only that the judge was handsomely paid but also that he was the recipient of large extraordinary payments in 2018.*”⁴² That was not all, the 1st Defendant confirms that the COI relied on the “*contents of the Salaries Register provided by the Minister of Finance.*”⁴³
61. Such an exercise by the Commission, notwithstanding the explanation of the 1st Defendant, Chairman Marshalleck, as to why the Salaries Register was relevant to the inquiry, was beyond *infra dig*, it also confirms that indeed the COI did rely on material in this case, not connected to the sale of government chattels, and therefore it did exceed its jurisdiction in this particular case.

⁴¹ Report of Commission of Inquiry Into The Sale Of Government Assets, Paragraph 5

⁴² Affidavit of E. Andrew Marshalleck, Paragraph 49.

⁴³ *Ibid* at Paragraph 51

C. BIAS

62. The Claimant alleges apparent bias by the Commission, by the First and Second Defendant as Commissioners and that the findings of the COI are therefore tainted by bias.
63. The Defendants say that the Claimant is alleging bias in this claim only by the First Defendant, who was the Chairman of the COI, and not against any other member of the Commission. The Defendants say that the Claimant is precluded from raising for the first time in his submissions, allegations of bias against any other member of the Commission since those allegations were not pleaded, and refer to the Belizean case of *Senator Michael Peyrefitte v Minister of Finance et al*⁴⁴ at paras 135 to 141 as authority for the proposition
64. The Claimant's response is that the Fixed Date Claim Form included an allegation of bias against the Commission, not just the First Defendant. The Claimant's First Affidavit in support of the Fixed Date Claim Form states that:
- “21. I also contend, though, that the proceedings and Report of the Commission were tainted with bias.”*⁴⁵
65. Furthermore, the Claimant's First Affidavit, which supports both the Fixed Date Claim Form asks that the Court have particular regard in examining the issue of bias to a statement of the Second Defendant at paragraph 41; and in particularizing the alleged bias of the First Defendant in his First Affidavit⁴⁶, the Claimant refers in his First Affidavit to the First Defendant's response to a statement made by the Second Defendant; and provides video copies of both that statement⁴⁷ and the response of the Chairman⁴⁸.
66. The Claimant differentiates the current case from the **Peyrefitte v Minister of Finance et. al** decision which was relied on by the Defendants, and says that the Claimant did not “*simply*

⁴⁴ Claim No. 563 of 2021

⁴⁵ Claimant's First Affidavit, Paragraph 21

⁴⁶ Ibid, Paragraph 22

⁴⁷ Ibid, Paragraph 31

⁴⁸ Ibid

insert a whole new ground in his reply submissions.”⁴⁹ I must agree. I find that there was sufficient in the pleadings and Affidavits of the Claimant that the Defendants would have known that an allegation of bias was being made not only as against the First Defendant and the Second Defendant as Commissioners of the COI, unlike the situation that Court found obtained in the **Peyrefitte** case. Granted, no “bloated beast” was created here, but neither was the beast “so significantly starved that its bare bones were incapable of revealing its aspect”. I find that the “features and species” of the current beast were “easily recognizable”⁵⁰, with a grateful homage to the decision of my sister Young J, in the **Peyrefitte** case.

Bias Test

67. The written submissions for the 1-3 Defendants commend the UK case of **Porter v Magill**,⁵¹ in which “...Lord Hope adjusted the test for apparent bias from “real danger of bias” and definitively restated it as: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”⁵²

68. I also accept the decision of the Eastern Caribbean Court of Appeal in **Vance Amoury v Thomas Sharpe QC**⁵³ which applied the two-stage test, for apparent bias (used in **Flaherty v National Greyhound Racing Club Ltd**⁵⁴) as follows:

“(a) the court must ascertain all the circumstances bearing on the suggestion that the tribunal was biased; and

(b) the court must ask itself whether those circumstances would lead a fair minded and informed observer to conclude there was a real possibility that the tribunal was biased.”⁵⁵

⁴⁹ **Peyrefitte v Minister of Finance et. al**, Paragraph 130

⁵⁰ *Ibid*, Paragraph 136

⁵¹ [2002] 2 AC 357 at para 103.

⁵² Written Submissions of 1-3 Defendants, Paragraph 7

⁵³ [2013] 3 LRC 60

⁵⁴ [2005] EWCA Civ 1117, Paragraph 27.

⁵⁵ *Amory v Sharpe QC* at page 66, Paragraph 9

69. As the **Amory** case states, “*the relevant circumstances are those apparent to the Court upon investigation.*” I concur that this Court must look at all the circumstances as they appear from the material before it, not just the facts known to the objectors or available to the hypothetical observer at the time of the decision

Waiver

70. It is accepted law that, as the 4th Defendant puts it, “*law that in order to challenge a decision on the ground of apparent bias, an objection to the participation of the decision-maker must be taken as soon as the person affected by the decision knows of the facts which entitle him to object. If after he or she knows of the basis for disqualification of the decision maker, the person affected allows the proceedings to continue without objection, he or she will be held to have waived his or her objection and the decision cannot be challenged on the ground of bias.*”⁵⁶

71. The first of the Defendants’ response to the Claimant’s allegation of apparent bias is to say that “*...the Claimant has waived his right to contend that the Chairman was biased since the facts upon which the Claimant relies were of public knowledge and would have been known by the Claimant. Despite this, the Claimant did not object.*”⁵⁷ The Defendants argue that “*All the circumstances raised by the Claimant were in the public domain and have been known by the Claimant.*” Indeed, the Claimant at para 23 of his 1st Affidavit stated, “*In 2016 it was publicly announced that Mr. Marshalleck had been elected to the National Executive of the People’s United Party and had become its official legal adviser.*” At paragraph 24 the Claimant alleged, “*I have known Mr. Marshalleck for years and from the time I first knew him he was an open supporter of, and crusader for, the pup...*” Further, the Claimant has not put forward any affidavit evidence to satisfy the Court that he was unaware of the facts on which he relies at the time of the hearing. In the circumstances, the Court should refuse to grant any relief on the ground of bias.”⁵⁸

⁵⁶ Written Submissions of the 4th Defendant, Paragraph 15

⁵⁷ Written Submissions of 1-3 Defendants at Paragraph 9

⁵⁸ Ibid, Paragraph 10

72. The Claimant's response to that is to submit that "...given what he then knew of the Commission, he had no reason to object to the continuation of the proceedings based on the apparent bias of the Chairman and Martinez"⁵⁹ and that, "In conceding that they "breached his right to natural justice and his right to protections of the law", the Defendants accept that the Commission failed to inform the Claimant of allegations against him and the substance of the evidence in support of them."⁶⁰
73. The written submissions for the Claimant argues that "Unaware of the evidence or allegations against him, the Claimant had no reason to perceive the Commissioners as his "adjudicators" with the potential to make determinations or "findings" in relation to him."⁶¹ The Claimant therefore submits "that he could only be held to have waived his right to object to the Commission's bias if he had full knowledge of all the relevant facts and, given his complete ignorance of the Commission's allegations against him or their evidence, he did not have full knowledge of all the relevant facts."⁶² I agree with this submission. It has a certain and irrefutable logic, especially when regard is had to the timing of the COI Report and the Press Release which publicly heralded the findings of the Report as it relates to this Claimant.
74. I rely upon the dicta of Lord Bingham in the UK case of **Locabail (UK) Ltd v Bayfield Properties Ltd. and another**⁶³, that "any waiver must be clear and unequivocal, and made with full knowledge of all the facts relevant to the decision whether to waive or not." I do not find, in all the attendant circumstances of this case, that the Claimant can be taken to have waived his right to the proceedings in this case based on the alleged bias of the First Defendant and Second Defendant qua Commissioners. I pass on, then to review the allegations of bias made.

⁵⁹ Claimant's Submissions in Reply to Written Submissions of 1-3 Defendants, Paragraph 11

⁶⁰ Ibid, Paragraph 12

⁶¹ Ibid, Paragraph 13

⁶² Ibid, Paragraph 14

⁶³ [2000] 1 All ER 65

Actual or Apparent Bias

75. In the 2009 Court of Appeal Belizean case of **BEL v Public Utilities Commission**⁶⁴, per Mottley P (as he then was), citing Devlin LJ in a 1960 UK case, comes this useful statement: “*Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so*”.⁶⁵
76. Bias is to be filtered through the lens of the “fair minded observer”, I am grateful to the submissions for the 1-3 Defendant which sets⁶⁶ out those qualities that such an observer should have:
- a. Has access to all the facts that are capable of being known by members of the public generally.⁶⁷
 - b. Is neither complacent nor unduly sensitive or suspicious.⁶⁸
 - c. Is able to distinguish between what is relevant and what is irrelevant and is able when exercising his judgment to decide what weight should be given to the facts that are relevant.⁶⁹
 - d. Always reserves judgment on every point until she has seen and fully understood both sides of the argument.⁷⁰

⁶⁴ Civil Appeal No. 8 of 2009

⁶⁵ Ibid, Paragraph 6

⁶⁶ Written Submissions of the 1-3 Defendants

⁶⁷ **Gilles (AP) v Secretary of State for Work and Pensions** [2006] 1 All ER 731 as cited in **Amoury v Sharpe**

⁶⁸ Loc. Cit.

⁶⁹ Loc. Cit.

⁷⁰ Loc. Cit.

- e. Takes a balanced approach to information provided, will take the trouble to inform herself on all matters that are relevant, reads the text of an article as well as the headlines, is able to put whatever she reads into overall social, political or geographical context and appreciates that context forms an important part of the material to be considered before passing judgment.⁷¹

77. The specific allegations of bias against the First Defendant Chairman, and the Second Defendant Commissioner of the COI by the Claimant are to be found in the affidavit evidence of the Claimant and are summarized in the Written Submissions of the Claimant for Judicial Review⁷² as follows:

“The Claimant grounds his allegation of the Commission’s bias primarily on the Chairman’s:

- (i) known support of the PUP;
- (ii) appointment to the chairmanship of BEL by the Prime Minister in the same month this Commission was issued,
- (iii) continued representation of the Prime Minister and the Government in cases during the tenure of the Commission,
- (iv) his criticisms of his fellow Commissioner’s stated expectation of the Government in regards to the sale of assets during the tenure of the Commission,
- (v) his stated “*trust*: and “*support*” in the Government’s promise to address the “*problems*” experienced in the sale of assets during the tenure of the Commission; and
- (vi) historic and continued legal representation of the Prime Minister and the Government in civil cases.”

As to Commissioner Martinez:

“...the Claimant now ask this Honourable Court to have particular regard to the portions of the statement made by Martinez during the tenure of the Commission.

... The Claimant submits that in saying, during the tenure of the Commission, that

⁷¹ **Helow v Secretary of State for Home Department and Another** [2008] 1 WLR 246 as cited in **Belize Electricity Ltd. v Public Utilities Commission**

⁷² Written Submissions of the Claimant for Judicial Review, Paragraph 40

- (i) *“it is time for all key players in the Ministry of Finance to be held “financially and criminally responsible” for the sale of government of assets;*
- (ii) *“Enough is enough- we can no longer continue to stand the stench of the pit of corruption that exists when it comes to the sale of the people’s assets.”⁷³ ; and*
- (iii) *“The discretionary power of the Minister of Finance and the Financial Secretary must be limited and mechanisms to guard against the abuse be put in place forthwith”⁷⁴*

78. The Claimant says that Martinez had already determined that:

- (i) “proper procedures, practices and applicable rules and regulations were not observed in the sale of government of assets by the previous administration;
- (ii) there was any corruption in the sale of such assets; and
- (iii) the Claimant, as the Minister of Finance under the previous administration, had abused his discretion.”⁷⁵

79. As to the allegations of bias against the First Defendant Commissioner, his response to the pleadings and evidence of the Claimant may be found in the First Affidavit of E Andrew Marshalleck. The essence of his replies are helpfully summarized in the written submissions of the 1st – 3rd Defendants and parsed there.⁷⁶ Rather than cutting and pasting that excerpt which runs for over four pages of 11 point font, I pass to the executive summary in the following paragraph as follows:

“In sum, the objective facts are that the first defendant/chairman served for one year in 2016 as legal adviser on the national executive of the PUP whose government appointed him in 2021 as chairman of the Commission of Inquiry. He had never previously held any other position within the PUP. The PUP government appointed him to the paid post of chairman of BEL, a position he held while serving as chairman of the commission and a position which other senior counsel have held in the past. He represents the prime minister as counsel in a defamation claim and has

⁷³ Claimant’s First Affidavit, Paragraph 31

⁷⁴ Ibid

⁷⁵ Claimant’s Written Submissions in Support of Claim for Judicial Review, Paragraphs 40-43

⁷⁶ Written Submissions of the 1-3 Defendants, Paragraph 15.

represented statutory bodies under both PUP and UDP governments, has represented the current government in a few cases and once represented the PUP member for Cayo South in a claim against the government.”⁷⁷

80. After an extensive review of the charges of bias made by the Claimant against the First Defendant Commissioner, bearing in mind, all the decisions which were helpfully cited in the written submissions provided by all parties in this case (most citations of which highlight the same passages) I cite with favour, those submissions made for the Attorney General in this case as follows: “The proposition that the fair-minded and informed observer would conclude that there is a real possibility that the First Defendant would be biased against the Claimant is one that is not to be accepted lightly. Practically all of the proven facts on which the Claimant relies as establishing that the Frist (sic) Defendant is his political opponent or is associated with his political opponents to such an extent as to satisfy the test of bias relate to the discharge of the First Defendant’s functions as an attorney at law. The observer would assume that in doing so the Frist (sic) Defendant acted with the independence and integrity which the code of conduct by which he is bound expects of him.”⁷⁸

81. The First Defendant Commissioner is a senior attorney at law, not a judge, but one whose independence and integrity is ascribed to him as credit, and whose unmooring from that code of conduct, must be proven by the Claimant who alleges bias. I do not find that the response of the First Defendant to the remarks of his fellow Commissioner, both of which were made to the media during the lifespan of the COI, rises to the level of being bias. Regrettable, perhaps, but this is not what this Court is asked to assess. Regardless of the views of the media or even the general public, who may not be in possession of all the relevant facts, and who may not have the faculties required for a fair-minded and informed observer, I do not find that the fair-minded and informed observer would conclude that that the First Defendant Commissioner was biased against the Claimant.

⁷⁷ Ibid, Paragraph 16

⁷⁸ 4th Defendant’s Written Submissions, Paragraph 33

82. As to the allegations of bias regarding the Second Defendant Commissioner, as the Claimant's own written submissions concede, "Admittedly Martinez made the scathing remarks in relation to what the current administration had been doing for the four (4) months preceding his statement but, it was clear to the fair-minded observer who heard his entire statement that Martinez was referring to what he felt was behaviour ongoing from the previous administration."⁷⁹ I do not subscribe to the view propounded by those submissions as to the effect of the statements made by Martinez as striking a fair minded observer as establishing his bias, unfortunate and ill-timed as they may have sounded to a bystander, coming as it did during the hearings of the COI. And I do take the view that although any Commissioner of a COI must perforce be sufficiently guarded in remarks made during the lifespan of the COI, to a voracious media, those particular scathing remarks made by the Second Defendant do not impugn the Claimant in a manner so as to taint the Commission with bias.

D. QUASHING

83. The Claimant grounds his claim for an order of certiorari quashing the Findings and Report of the Commission on the allegation of the actual or apparent bias of the First Respondent, as well as on the admitted fact that the Claimant's right to the protection of law was infringed. The 4th Claimant says that such a quashing order should only, even in a case where a declaration that natural justice was breached is not appropriate except in exceptional circumstances on the basis that an investigative report has no legal consequences⁸⁰ and refers to the UK case of **Clegg v Secretary of State for Trade and Industry**⁸¹, in Burton J explains the rationale for the rule that quashing relief in a case like this was an exceptional remedy as follows:

"[44] The reasons for the exceptional nature of relief in cases such as the present are not difficult to see. A declaration made by the court in general terms that inspectors had acted unfairly would be perceived as undermining their entire report, and their

⁷⁹ Claimant's Written Submissions in Support of Claim for Judicial Review, Paragraph 42

⁸⁰ **Maxwell v Department of Trade and Industry** [1974] QB 523

⁸¹ [2001] EWHC Admin. 394 at Paragraphs 44 and 45

conclusions would be seen as deprived of any value, even if the unfairness in question might be minor or affect only part of the report. A declaration that an individual had been treated unfairly would undermine all of the findings and conclusions of the Inspectors adverse to that individual. On the other hand, a particularised declaration, aimed at specific findings or criticisms, would involve the Court in trying the facts in question and constituting itself a court of appeal against the findings of the Inspectors. Parliament has not provided for any such appeal procedure. A declaration of the kind sought in this case is not only a discretionary remedy: it is to be given only in exceptional circumstances.

[45] In this connection it is relevant that the damage of which Mr Clegg complains is to his reputation. He seeks “some small redress and vindication”. A man's reputation should depend on his conduct. Vindication would take the Court into the area of trying facts, into which the Court cannot venture. Moreover, as Lawton J pointed out in the passage cited at para [40] above, a person may suffer damage to his reputation without suffering legally recoverable damage.”

84. It has already been conceded that the Claimant’s right to protection of law and natural justice was infringed, in a number of ways. The Claimant has claimed in the Application for Leave for Judicial Review, the Fixed Date Claim Form, three sworn Affidavits in support and written submissions filed on his behalf, that the Commission :
- (i) failed to inform the Claimant that it was in possession of material that could cast an unfavorable light on his conduct as Prime Minister and Minister of Finance during the period under inquiry;⁸²
 - (ii) failed to suggest that his testimony would need to speak to a possible finding by the Commission of wrongdoing on my part⁸³;
 - (iii) failed to advise itself and to inform of the allegations made against him and the substance of the evidence in support of them⁸⁴;
 - (iv) failed to advise itself and to inform the Claimant that he was entitled to representation by an attorney for the presentation of his case;

⁸² Claimant’s 1st Affidavit, Paragraph 8

⁸³ Ibid

⁸⁴ Ibid

- (v) failed to advise itself and to inform the Claimant that he was entitled to cross-examine any witness on anything said of and concerning him⁸⁵;
- (vi) failed to give any warning of what it was considering saying about the Claimant in its report;⁸⁶
- (vii) failed to allow the Claimant to make any representation on their findings;⁸⁷
- (viii) failed to invite the Claimant to show reasons why they should not record those findings⁸⁸; and
- (ix) relied on evidence not connected with the subject of the Commission's inquiry⁸⁹

85. This Court has no difficulty finding that this is an exceptional case in which natural justice was denied, but also in which the Claimant's constitutional rights were infringed, and therefore, those paragraphs and sections of the COI Report and the findings therein which are affected by the serial denials of the rights of this Claimant should be quashed. A partial quashing order will therefore be made. I agree with the Defendants that there are parts of the Report which are "free standing" and can coherently survive removing references to the Claimant.

86. The Trinidadian case of **Garcia v. Ibrahim et al**⁹⁰ involved a Commission of Inquiry is helpful. Ramcharan J, concluded that the Claimant was not provided with a proper opportunity to answer the proposed findings in the Commission of Inquiry's Report resulting in a breach of natural justice, and held the findings of the Commission unreasonable. There was no discussion regarding severance per se, but Ramcharan J concluded by saying:

"186. It is to be noted that most of the recommendations, and findings of the Commission do not concern this Claimant and are unaffected by this decision. Further, even some of the recommendations with respect to the Claimant may have

⁸⁵ Ibid

⁸⁶ Ibid, Paragraph 19

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid, Paragraphs 16 and 17

⁹⁰ Claim No. CV2016-04288

some merit, and may in fact have remained the same, even if the Claimant had been notified of all the proposed findings in the June 22 letter. **However, by not allowing the Claimant to respond to several serious and damning allegations, the Commission's final report is contaminated to that extent.**

187. Having said that, the court takes judicial notice of the length of time and the amount of resources spent in the Commission, and notes that serious and genuine concerns have been raised by the report. **The Court therefore must make it clear that the report in of itself is not rendered nugatory by this decision, nor any its recommendations, except as insofar as they deal with the Claimant, and those matters of which he was not given full notice.** What action, if any, is taken with respect to the report, is of course solely within the purview of the Executive branch, and it would be inappropriate for this Court to urge any action, one way or the other on it, except to say, that except for the recommendations set aside by the Court, the report remains valid.”⁹¹

87. To the extent that there are parts of the COI Report which have nothing to do with how the COI deals with the Claimant, and those matters of which he was not given full notice, and/or denied constitutional rights, the COI Report - as amended by consent in my decision in **Patt v. Marshalleck et al**⁹² - in and of itself is not rendered nugatory, nor any its recommendations which do not have anything to do with matters of which the Claimant was denied his rights to natural justice and/or his constitutional right to protection of the law.
88. The written submissions for the 1st – 3rd Defendants helpfully sets out what may be severed and quashed and what may survive on its own. They posit that “Those titles that contain paras or parts of paras that may tend to prejudice the Claimant are “D Summary of Findings”, “E(v), E(vii) The Tacoma” and “F Conclusion (part of paragraph 106).”⁹³
89. The 1st - 3rd Defendants say that, “Of the 15 paragraph titles that comprise the Report, the following titles do not in any way implicate, affect or prejudice the Claimant and are divisible from those that may tend to prejudice him:

⁹¹ Ibid, Paragraphs 186 and 187

⁹² Claim 29 of 2022, Supreme Court of Belize

⁹³ Written Submissions for the 1-3 Defendants, Paragraph 37

- A. The Commission
- B. The Terms of Reference
- C. The Inquiry
- E. Detailed Findings
 - E(i) The Finance and Audit Reform Act
 - E(ii) The Open, Selective and Limited Tendering Procedures
 - E(iii) The Financial Orders
 - E(iv) The Stores Orders
 - E(v) The Public Procurement Procedures Handbook (**except perhaps for paras 66, 69, 70 & 71**)
 - E(vi) The IMF Draft Financial Regulations
 - E(viii) Livestock
- F. Conclusion (**except for para 106**)
- G. Recommendations of Commissioner Martinez
 - First Schedule”⁹⁴ (Emphasis added)

90. I agree. In all the circumstances of this case, this Court agrees that any and all portions of the COI Report which refer to the Claimant in any way whether directly, or by inference, must be excised from the Report, and in particular, the findings contained in the COI Report at paragraphs 12, 13, 14, 15, 16, 22, 23, 24, 26, 32, 40, 42, 66, 67, 68, 69, 70, 71, 72, 83, and paragraph 106.⁹⁵

91. The Claimant also claims *“An order or prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission; and a permanent Injunction restraining the Government of Belize, its servants, agents, departments, authorities and officials, from implementing or acting upon the Findings and Report of the Commission.”*

⁹⁴ Ibid, Paragraph 36

⁹⁵ Claimant’s 1st Affidavit, paragraphs 18 and 20

92. I will not grant this order. As partially quashed, what action, is now taken with respect to the COI Report, is within the purview of the Executive branch and it would be inappropriate for this Court to prevent any action on it.

COSTS

93. The Claimant asks for costs to be awarded in this Claim. He has had success on some of the reliefs claimed, but not on others; as set out above. By Agreement among the Defendants, the 4th Defendant will pay any damages awarded and and costs assessed. Accordingly, the 4th Defendant shall pay Fifty per cent (50%) of the costs of the Claimant to be taxed if not agreed.

CONCLUSION

94. I want most particularly to register my gratitude to the Counsel for all the Parties, Ms. Naima Barrow, Godfrey Smith SC and Mr. Hector Guerra, Douglas Mendez SC and Ms. Iliana Swift for the compendious and comprehensive written submissions provided, which have been of invaluable assistance to me in this claim.

ORDERS

95. The Following Declarations and Orders are made:

1. A declaration that the findings and Report were made in consequence of a Commission of Inquiry process that was violative of the Claimant's natural justice rights and violative of the Claimant's Constitutional right to protection under law;
2. An order of certiorari partially quashing the Findings and Report of the Commission, contained in the COI Report at paragraphs 12, 13, 14, 15, 16, 22, 23, 24, 26, 32, 40, 42, 66, 67, 68, 69, 70, 71, 72, 83, and paragraph 106;

3. The Claimant is awarded the sum of \$125,000.00 Belize Dollars as redress for compensatory damages and \$60,000.00 Belize Dollars in vindicatory damages which shall be paid to the Claimant by the 4th Defendant.

4. The 4th Defendant shall pay Fifty per cent (50%) of the costs of the Claimant to be taxed if not agreed.

DATED JUNE 28, 2022

LISA M. SHOMAN

JUSTICE OF THE SUPREME COURT OF BELIZE