[2015] CCJ 6 (AJ)

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No. BZCV2014/001
BZ Civil Appeal No. 44 of 2010

BETWEEN

JUANITA LUCAS	**1ST APPELLANT**
CELIA CARILLO	**2ND APPELLANT**

AND

THE CHIEF EDUCATION OFFICER
THE MINISTER OF EDUCATION
YOLANDA GONGORA
JAHMOR LOPEZ
PEDRO KUKUL
ENDEVORA JORGENSEN
MEMBERS OF INVESTIGATION TEAM INVESTIGATING THE APPELLANTS
THE ATTORNEY GENERAL OF BELIZE **RESPONDENTS**

Before the Honourables **Mr Justice Nelson**
Mr Justice Saunders
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson

Appearances

Ms Magali Marin-Young SC for the Appellants

Mr Nigel Hawke and Ms Marcia Mohabir for the Respondents

JUDGMENT
of
The Honourable Justices Nelson, Hayton and Anderson
Delivered by
The Honourable Mr Justice Nelson
on the 22nd day of April 2015
and
JUDGMENT

of
The Honourable Justice Saunders
and
JUDGMENT
of
The Honourable Mr Justice Wit

JUDGMENT OF THE HONOURABLE JUSTICES NELSON, HAYTON AND ANDERSON

Introduction

[1] The appellants, Mrs. Juanita Lucas and Mrs. Celia Carillo, (hereinafter referred to individually as "Mrs. Lucas" and "Mrs. Carillo" and together as "the Appellants") were at all material times the Principal and Vice Principal of the Escuela Secundaria Técnica de México ("ESTM") located in the Corozal District. ESTM is a secondary school which receives funding from the State and is managed by a Board of Directors. The school has been plagued by a series of administrative upheavals which have led to proceedings before this Court.

[2] By separate letters dated April 7, 2008 the Chief Education Officer suspended the Appellants for an initial period of 30 days (later extended) with full pay "to allow the school to continue uninterrupted." The Appellants challenged these suspensions by way of fixed date claim form dated April 18, 2008. Their claim sought both judicial review of the decision to suspend them as well as relief pursuant to section 20 of the Constitution for breach of their constitutional rights, namely their right to a fair hearing and their right to work, and damages attendant thereto. In the Supreme Court, Hafiz-Bertram J quashed the suspensions and the process leading thereto but declined to find that their constitutional rights were breached. The order of the learned judge consigned the suspensions, the investigation and the report on the investigation to oblivion, but declined expressly to restore the Appellants to their respective posts at ESTM.

[3] The Appellants, although vindicated by the orders rescinding the unlawful administrative action, remained dissatisfied at the denial of constitutional relief. They therefore appealed to the Court of Appeal (Sosa P, Morrison JA and Awich

JA) which again rejected their claims for breach of constitutional rights and "vindicatory" damages. The Appellants then appealed to this Court.

[4] In our view, the Appellants have failed to establish any breach of their constitutional rights arising out of the circumstances surrounding their suspension. Neither have they shown even if there were such breaches, that they were so egregious as to warrant an award of "vindicatory" damages in order to uphold their constitutional rights by reflecting their importance and public outrage at the gravity of the breach and deterring future breaches.

[5] This Court has therefore dismissed the Appellants' appeal for the reasons detailed in the following paragraphs.

The factual background

[6] On July 1, 2004 Mrs. Lucas was appointed Principal of ESTM. Shortly thereafter on August 1, 2004 Mrs. Carillo assumed duties as Vice-Principal of ESTM.

[7] At the time the Appellants took control of the administration of the school it needed improvement in several areas, including maintenance, the moral tone of the school, delivery of the curriculum, teacher performance, teacher attitude and overcrowding in classrooms. The Board of ESTM gave the Appellants a mandate on their appointment to improve the efficiency and effectiveness of the school. In seeking to fulfil this mandate the new administration headed by the Appellants soon ran into difficulties with the teaching staff, notwithstanding that the Appellants did successfully effect some changes. Those difficulties caused Ministry of Education officials and the Manager of Corozal District Education Centre to meet with the Principal and members of the Board of ESTM, and representatives of the Belize National Teachers' Union in November 2005, and subsequently with twenty-nine teachers of ESTM.

[8] Thereafter the Ministry officials held a meeting with Mrs. Lucas and Mrs. Carillo at which a verbal report of the concerns expressed by the teachers was given. The Appellants were offered an opportunity to respond to the concerns raised by the teachers. It was explained that the purpose of the meeting was to communicate the

teachers' concerns to the administration.

[9] The team from Ministry of Education in reporting on the meeting with the teachers congratulated the Board and school administrators "on the tremendous progress made in a very short time in many areas." The Report continued: "It is noted that the changes at Escuela Secundaria Técnica de México has (sic) caused a number of teachers, including industrious and indolent, to leave the institution. Key among the concerns raised by the teachers is the leadership styles (sic) of the administrators." The Report concluded that: "… the concerns raised by teachers at the meeting of December 8, 2005 call for some intervention to be taken by the Ministry. It is therefore incumbent on the Ministry to ensure that these findings are discussed with the Principal as an initial step in charting the way forward."

[10] The Appellants have taken no issue with the Ministry of Education intervention in 2005 or with the conduct of inquiries at the school during the course of that intervention. Nevertheless, the facts recited above establish that by 2005 a tense and uneasy relationship existed between the Appellants and the teaching staff of ESTM. Nor did the Appellants complain then of any infringement of their constitutional rights by an investigating process that bears some similarity to the one now complained of.

The events of 2008

[11] In January 2008, tension between the Appellants' administration and the teaching staff again erupted.

[12] On January 8, 2008 five Heads of Department ("HOD") wrote the chairperson of ESTM, Mrs. Narda García, in which the Heads stated: "It seems … that the polarization of staff and administration has reached to an all-time high and seems not to beckoning (sic)." The Ministry of Education received a copy of this letter.

[13] On January 23, 2008 twenty-one teachers wrote Mrs. García, expressing solidarity with the HOD and stating: "The inevitable tension and discomfort existing between administration and teachers permeates the work environment." A copy of this letter also reached the Ministry of Education. Also on that date Mrs. García resigned from

the Board of ESTM.

[14] On February 28, 2008 the Ministry of Education summoned Mrs. Lucas to a meeting with the Minster of Education, the Chief Education Officer, the Deputy Chief Education Officer, the Director General of School Services and the Corozal District Education Manager to discuss the two letters from the teachers at ESTM. During the course of that meeting, information was received that over twenty teachers at ESTM had reported sick in what is called in industrial relations a "sick-out." Mrs. Lucas was invited to explain why the teachers were apparently dissatisfied with the administration of the school but was unable to do so. At the end of the meeting, the Minister of Education intimated that he had decided to appoint an investigating team "to investigate what was happening at the school to determine the cause(s) of … discontent between the teachers and [the] administration."

[15] On February 29, 2008 the Minister of Education and the Director of School Services visited ESTM to assure teachers, staff, administration, students and parents ("the stakeholders") that the Ministry was committed to resolving the matter so that the education of the students could continue "uninterrupted."

[16] The Minister of Education appointed an investigating team comprised of the third to sixth Respondents in this appeal. The team's terms of reference were as follows:

> " … to meet with all stakeholders including Board members, administration, teachers, students and parents in an effort to determine the cause(s) of the apparent discontent between the teachers and administration and to submit a report of findings including recommendations for resolving the situation. Based on the correspondences from Heads of Department and teachers to the Board of Management, the meeting with the principal, as well as a previous report of a meeting with staff of ESTM of December 8, 2005, the following areas were to be covered during the investigation:
>
> 1. Personnel policies and practices
> 2. Communication processes (at all levels including the Board, Administration, Heads of Departments, Teachers, Parents and Students)
> 3. Planning practices at all levels

4. Teamwork and leadership
5. Any other factor(s) that might be contributing to the discontent."

[17] The procedure adopted by the investigating team was to hold separate meetings over the period March 3-11, 2008 with the Board of ESTM, Mrs. Lucas, Mrs. Carillo and each of the stakeholders above referred to. It is important to trace the procedure at these meetings because the Appellants have contended that the appointment of the investigating team, the process of its investigation and its report were procedurally unfair and constituted a breach of their constitutional right to the protection of the law, equal protection of the law and due process.

[18] At the meeting of the investigating team with the HOD on March 3, 2008 the Director General of School Services, Ms. Gongora, the third Respondent, "explained that this was an internal matter and the team was only gathering information so that the matter could be resolved. The HOD relayed this to the teachers who agreed that the meeting should proceed." The meeting with the teachers and staff proceeded on the same basis over a three-day period. At the meeting in the school auditorium with the parents of students in the absence of the Appellants (but in the presence of Mrs Lucas' husband, a teacher at the school) parents were reassured … "that the team was commissioned to investigate what was happening at the school so that there can be some normalcy and stability."

[19] The evidence of an eye-witness at the meeting, the fourth Respondent, Mr. Jahmor López[1], was as follows:

> "1. The Principal was very co-operative in making the auditorium available for the meeting with the parents and also provided a PA (microphone) system …
>
> 2. The parents were concerned about the treatment of their children, who had to sign a register in order to use the bathroom and who were rationed toilet tissue and had to purchase tissue to use the bathroom …
>
> 3. Parents were also concerned that their children were getting teachers who were inexperienced because of the high turnover rate of teachers …

[1] Affidavit of Lopez sworn to on February 25, 2010

4. The parents also stated that they had reports of conflicts, disharmony and disunity within the school and that administration was not communicating with teachers …

5. The parents were reminded that the team was there to investigate what was happening and it did not have any authority or power to fire anyone, not even the principal. They were reminded that the Board of Management, which has two parent representatives, is the Managing Authority, and that body alone has that power."

[20] As might be expected, many parents took advantage of the opportunity to go onto the platform to take the microphone to express their views. The meeting was said to be a "boisterous" meeting where the convenient meeting place was said to be one where the public would have been able from the street to hear what went on at their local school. It also happened that some TV reporters interviewed some parents, with the interviews appearing as news clips on local television.

[21] Nothing in the evidence of Mr. Lopez or any other witness suggests that the Appellants were pilloried, or that defamatory words were spoken of them, or that members of the investigating team participated in or encouraged disrespectful behaviour towards the Appellants.

[22] At the meeting between the investigating team and the Board of Management, Mrs. Lucas, a Board member, was present. Ms. Gongora explained that the Ministry of Education had intervened because the Board did not take any action on the letter of the HOD of January 8, 2008 and also because the teachers had taken matters in their own hands since February 28, 2008. Mrs. Lucas was invited to explain why she had asked her attorney-at-law to write the Board. She refused to answer, and was given the option of staying in the meeting and answering, or leaving the meeting and not answering. She chose to stay but refused to answer.

[23] The meeting between the students and the investigating team took place in the school auditorium after the team had caused the school secretary and teachers to leave the room.

[24] On March 11, 2008 the investigating team met with Mrs. Lucas and her agent and attorney-at-law, Mr. Bernard Pitts SC. Ms. Gongora reiterated that this was "not a

hearing but an exploratory interview, so that the team could "collect information it needs for a fair and transparent investigation." Mr. Pitts SC remarked that he now felt that the matter was being addressed in the right manner. The thrust of the investigation was to obtain from Mrs. Lucas her explanation for the state of affairs at ESTM.

[25] The investigating team also met with Mrs. Carillo and her agent and attorney-at-law, Mr. Dean Lindo SC on March 11, 2008. Again, Ms. Gongora explained that this was not a hearing and that no allegations were being made against the Vice Principal. The purpose of the meeting was "to gather information to find the possible cause of the discontent between staff and administration." Questions were directed towards discovering Mrs. Carillo's explanations for the strained relations between the staff and the administration.

[26] On March 25, 2008 the investigating team submitted a Report ("the 2008 Report") to the Chief Education Officer. By a letter of even date to the Vice-Chairman of the Board of Management, Dr. Myers, the Chief Education Officer promised to send Dr. Myers a copy of the 2008 Report by the following day and directed him to convene a special meeting of the Board of Management to discuss the findings of the investigating team and take "necessary decisions and actions to resolve the matter."

[27] The Board of Management held a meeting on March 27, 2008. Mrs. Lucas distributed to members a letter from her attorney-at-law warning that if allegations were to be formulated against her she had a right to be informed and given ample time to prepare and respond. Mrs. Lucas' attorney-at-law also complained that the 2008 Report had made conclusions on matters not put to Mrs. Lucas. The Board meeting did not arrive at a consensus on what action it should take, if any, on the 2008 Report. Dr. Myers, the pro tem chairperson resigned from the Board.

[28] On April 1 and 2, 2008 a majority of the teachers of ESTM staged another "sick-out" and classes at the school had to be cancelled. In the absence of any decision on the 2008 Report by the Board, the Chief Education Officer referred that Report

to the Corozal Regional Education Council (CREC). CREC met on April 1, 2008 in an extraordinary meeting and made the following recommendations:

> "1. The Principal and the Vice Principal should be put on leave with pay to allow full investigation to (sic) the situation at ESTM.
>
> 2. That the Ministry appoints an acting principal and a vice principal to run the affairs of the school while the principal and vice principal are on leave.
>
> 3. That the Board of Management of ESTM be made fully operational in accordance with the handbook of policies and procedures."

[29] On April 4, 2008 the Ministry of Education offered Mrs. Lucas an appointment as a "teacher on special assignment" and two weeks paid leave, an offer which she rejected. The Ministry also offered Mrs. Carillo through her lawyer, Mr. Lindo SC, a transfer to a post of Vice-Principal of a government school but she refused the proposal.

The suspensions

[30] By separate letters each dated April 7, 2008 the Chief Education Officer wrote each of the Appellants placing them on suspension for 30 days with full pay "to allow the school to continue uninterrupted." She further stated that by April 22, 2008 the Appellants would be informed "of specific allegations if any [,] are to be brought against you." By letter dated April 28, 2008 the Chief Education Officer indicated that she was still reviewing all information about the suspensions and invited both Appellants to a meeting, but they both declined the invitation. The Chief Education Officer also sent them a transcript of the investigation proceedings and invited them to respond. However, by April 15, 2008 the Appellants' new attorneys-at-law wrote a letter before action to the Minister, the Chief Education Officer and the Chief Executive Officer demanding withdrawal of the suspensions by April 17, 2008. On April 18, 2008 the Appellants commenced separate but identical claims against the Respondents in this appeal.

[31] On May 7, 2008 the Chief Education Officer wrote the Appellants extending the suspensions to June 27, 2008 "to allow the Board opportunity to conduct necessary investigation and review of the disruption of classes at ESTM."

[32] The suspensions expired on June 27, 2008 while legal proceedings were afoot. Hafiz-Bertram J in a ruling on July 2, 2008 ordered that the status quo as at May 9, 2008 continue until final determination of the matter. The suspensions were never thereafter extended, but were ultimately held by the learned trial judge to have been unlawful. The Court of Appeal pronounced in *obiter dicta* that the Appellants must be deemed to have been wrongfully dismissed as from June 28, 2008. These dicta have not been challenged. The Appellants continue to be paid their full salary and increments up to the present time.

The Appellants' claims in the Supreme Court

[33] On October 13, 2010 Hafiz-Bertram J made orders of *certiorari* quashing the Appellants' suspensions by the Chief Education Officer as ultra vires the Education Act. The learned judge also declared the appointment of the investigating team, its investigation, its subsequent Report and the referral of that Report (the 2008 Report) by the Ministry of Education illegal and unlawful. She made those declarations on the basis that only the Board of ESTM had the power to suspend under the Education Act and the Education Rules and not the Chief Education Officer. The investigation was held to be unlawful because it was said to breach the Appellants' right to be heard. The Report was unlawful because "the Committee" breached the procedural and substantive legitimate expectation of the Appellants to a fair investigation by a duly appointed investigation team. The learned judge also ordered the Board of ESTM (not a party to the proceedings) to proceed to comply promptly with section 16 of the Education Act in taking any disciplinary action against the Appellants.

[34] In this appeal and before the Court of Appeal the Appellants took issue with the learned judge's refusal of constitutional relief to the Appellants on the ground that the suspensions did not infringe the Appellants' right to a fair trial in breach of

sections 6(1) and 6(7) of the Constitution or their right to work in breach of section 15(1) of the Constitution.

[35] In the Court of Appeal the Appellants sought the following relief apart from costs:

1. A declaration that the Chief Education Officer in suspending the Appellants from their jobs as Principal and Vice-Principal respectively infringed their constitutional right to a fair hearing in violation of sections 6(1) and 6(7) of the Belize Constitution;

2. A declaration that the Chief Education Officer in suspending the Appellants from their jobs as Principal and Vice-Principal respectively infringed their constitutional right to work in violation of section 15(1) of the Belize Constitution;

3. A declaration that the Investigative Team's investigation and report infringed the Appellants' constitutional right to a fair hearing in violation of sections 6(1) and 6(7) of the Belize Constitution;

4. An order for damages in compensation of the breach of the Appellants' constitutional right to work and right to a fair hearing.

[36] The Court of Appeal dismissed the Appellants' appeal on August 1, 2013 and held that the Appellants failed on all the grounds that raised constitutional questions. Consequently the appeal against the order denying vindicatory damages for contravention of constitutional rights also failed.

[37] In this appeal, the salient facts are not in serious dispute. The divergence between the parties is as to the perception of those facts. Was the investigation undertaken by the Ministry of Education a disciplinary inquiry or a fact-finding investigation?

[38] A second issue which arises is as to the powers of the Minister to institute an investigation and appoint persons to investigate the causes of tension at the ESTM school in the public interest and in the discharge of his responsibility for education in Belize. The Court of Appeal concluded at [72]-[80] that the Minister had such power as a matter of law. There is no suggestion that he exercised such powers

other than in good faith. We find no error in the Court of Appeal's finding on the validity of the Minister's exercise of his power and duty to investigate in this case.

[39] As regards the nature of the inquiry, the Court of Appeal was of the view that the Minister was acting legally in response to an educational crisis in Belize and that the proper inference was that the 2008 inquiry, like the 2005 inquiry, was purely investigatory. Awich JA rightly considered that where a finding of fact by the trial court is really an inference from other facts an appellate court is equally competent to draw the appropriate inference: *Benmax v Austin Motor Co. Ltd.*[2]

[40] In this Court the Appellants filed an Amended Notice of Appeal containing eleven grounds of appeal. The Respondents have raised as a preliminary issue that the Appellants, having filed a mixed constitutional and judicial review claim are not entitled to proceed on both at first instance or on appeal.[3] The submission suggests that since the present action was predominantly a judicial review action with only ancillary constitutional issues, it was an abuse of process to pursue both constitutional and administrative law relief simultaneously in the same action.[4] However, the Supreme Court (Civil Procedure) Rules 2005 ("the Rules") expressly permit a claimant to file mixed claims for judicial review and constitutional relief, and in our view, it is far too late in these proceedings to consider what directions a judge might have given under Rule 56.8(3). No application was made at the leave stage, before the trial judge or the Court of Appeal for a ruling that it was inappropriate to pursue both claims together. Leave to apply for judicial review has already been granted. Rule 56.8(3)(b) and Rule 26.9(3) may also have been relevant. It must be assumed that the learned judge considered the proceeding by way of judicial review with a prayer for constitutional relief appropriate at that stage. If the Respondents wished to resist the application for leave to a make a judicial review claim on the ground that the constitutional remedy[5] was a more suitable alternative, they should have mounted their challenge much earlier and not acquiesced in the course these proceedings have taken. This is precisely the point

[2] [1955] AC 370 (H.L.)
[3] See [44] of the judgment of Awich JA
[4] For a good discussion of this point under the equivalent Part 56 of the Trinidad and Tobago Civil Procedure Rules see [30] of *Webster v Attorney-General* in the Court of Appeal (unreported, Civ. App. No. 113 of 2009) and in the Privy Council [2011] UKPC 22.
[5] See Rule 56.3(e) of the Rules

made by the Judicial Committee in *Attorney General of Trinidad and Tobago v Ramanoop*[6] in the following passage:

> "Their Lordships add that it is in everyone's interest that an applicant should be in a position to decide which procedure is appropriate, preferably before he starts his proceedings or, failing that, at the earliest opportunity thereafter. To this end observations made, at para 19, by Hamel-Smith JA in *Attorney-General of Trinidad and Tobago v George* 8 April 2003, are pertinent:
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> > "The decision [in *Jaroo's* case] also serves to emphasise, in my view, that the state must at an early stage, ideally in response to any letter before action, make it known whether it will be challenging the allegations or not and on what basis. In that way, the aggrieved party would be in a position to make an informed choice of procedure. Failure to respond may lead to the State being condemned in costs, in the event that the party proceeds under section 14 of the Constitution only later to find that the facts were in issue and no constitutional principle of general significance to citizens is involved."

We would accordingly reject the preliminary point made by the Respondents.

[41] The main issue to be resolved must be whether the Appellants have established a breach of any constitutional rights.

The right to work

[42] Section 15 of the Belize Constitution, so far as is relevant, provides as follows:

> "15.(1) No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise."

[43] The Appellants' appeal invoked section 15 of the Constitution by way of positing that the Court of Appeal erred in law/misdirected itself when it held that the Appellants' right to work could not have been infringed because:

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[6] [2006] 1 AC 328 at [33]

(1) the Appellants' suspension, though unlawful, was for "a reason";[7]

(2) they were not arbitrarily removed from their employment permanently;

(3) their suspension did not fit within the three kinds of cases where the right to work had been upheld;[8]

(4) the true nature of the right that was contravened was a right under the Education Act or under their contracts of employment and not under section 15(1) of the Belize Constitution and

(5) there was no legislative restriction on their said right.[9]

[44] The Appellants contended that the right to work meant more than the right to earn money and that an employee must not be deprived of the opportunity of doing his or her work or of the satisfaction and pride of executing his or her job. Thus the fact that they continued to receive their salaries and increments after the unlawful suspensions did not vitiate the breach of their rights under section 15. Counsel for the Appellants urged upon the Court the case of *Duncan v Attorney-General*[10] where Byron CJ (as he then was) held in the Grenada Court of Appeal that an officer who is prevented from discharging the duties of his office or is excluded from the workplace against his will and without lawful authority has been removed from office even if he is in receipt of salary. It was submitted that the Court should adopt a purposive interpretation of the phrase "the right to work" in the Constitution along the lines of *Duncan.*

[45] Counsel also cited the observations of Lord Denning in relation to the common law right to work in *Langston v Amalgamated Union of Engineering Workers* wherein his Lordship emphasised the pride and satisfaction derived from pursuing one's profession separate and apart from the receipt of monetary compensation.[11] Reliance was also placed on *Maria Roches v Clement Wade,*[12] a decision of the Supreme Court of Belize, which followed a similar line of reasoning in holding that

[7] Supra at [102].
[8] Supra at [97].
[9] Supra at [98].
[10] [1993] LRC 414.
[11] [1974] 1 All ER 980 (CA).
[12] Supreme Court Action No. 132 of 2004 (unreported).

an unmarried female teacher who had been dismissed by reason of her pregnancy was entitled to constitutional relief.

[46] Mrs. Marin-Young SC correctly perceived that the major obstacle to her submissions was the Belize Court of Appeal's interpretation of the right to work in *Fort Street Tourism Village v Attorney General.*[13] In that case Mottley P, with whom Carey and Morrison JJA agreed, remarked that "[w]hile it is often referred to as the right to work, what is in fact guaranteed is not the right to work but the opportunity to work." Morrison JA went on to explain that section 15, taken as a whole was intended to be applicable to situations, where, through legislation, regulation or administrative action on the part of a public authority, an unjustifiable fetter is placed on the citizen's right to freely choose or practise a trade or profession.[14]

[47] Counsel for the Respondents expressly relied on the dicta of Mottley P in *Fort Street Tourism Village Ltd* as indicating the proper scope of the right to work in Belize, namely "an opportunity to gain his living by work he wishes to engage in." The Respondents submit that there was no legislation or statutory instrument that denied the Appellants an opportunity to gain a living. They were not prevented from entering into their profession as educators. They were still employed by the Government of Belize, although they were not allowed to perform their duties for a temporary period.

[48] The right to work is an important socio-economic right that has found expression in the 1966 Human Rights covenants adopted by the United Nations. However, the scope of that right must vary from country to country dependent on a State's economic well-being. Thus, the Belize Court of Appeal has properly concluded that the right to work is not a guarantee of employment but merely an opportunity to earn a living. No legislative or administrative fetter or regulation may be placed on that right. An unmarried female may not be deprived of the opportunity to work on the ground of pregnancy as in *Maria Roches.* Membership of an association cannot

[13] (2008) 74 WIR 133.
[14] Supra at [137].

be placed as a pre-condition to obtaining a statutory licence to be a commercial hauler of petroleum products as occurred in *Belize Petroleum Haulers Association v Daniel Habet et al*.[15] Nor should a person be deprived of work contrary to the provisions of the Constitution (*Inniss v Attorney General*[16]) and *Fraser v Judicial and Legal Services Commission*[17] (cases involving summary termination of a yearly contract without providing the protections guaranteed by the Constitution).

[49] No legislative or administrative fetter or regulation was placed on the Appellants' right to work in this case. The Appellants' submissions fail to examine the nature and quality of the suspensions. Suspensions may be disciplinary i.e., punitive or investigatory i.e., precautionary. Where the suspension is purely investigatory the employer should make that apparent to the employee. The aim of the investigatory suspension is to facilitate the investigation while at the same time avoiding prejudging issues. The employment continues unabated, as it would if leave of absence were granted at the employee's request. In the instant appeal the suspensions of April 7, 2008 were expressed to be in order "to allow the school to continue uninterrupted".

[50] By contrast in the case of a disciplinary suspension the disciplinary procedures are triggered. An example of a disciplinary suspension is found in the letter dated February 25, 2004 from the chairperson of ESTM to Ms. Julissa Cowo. That was a case of an indefinite suspension in which the disciplinary procedure under Rule 93(1)(a), (b), (c), (d) and (f) of the Education Rules was referenced. The teacher was interdicted under Rule 94(3). There followed a letter dated March 9, 2004 laying disciplinary charges against Ms. Cowo.

[51] In the instant case, there was at the date of commencing these actions on April 18, 2008 no question of any interference with the Appellants' right to gain their livelihood or of any unjustifiable fetter being placed on their right to practise the teaching profession. It is in that sense that the statement of Awich JA that the suspension of each appellant was "for a reason" must be understood. That reason

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[15] Civil Appeal No. 20 of 2004 (unreported).
[16] [2008] UKPC 42.
[17] [2008] UKPC 25.

was further stated by the Chief Education Officer in extending the suspension on May 7, 2004 "to allow the Board opportunity to conduct necessary investigation and review of the disruption of classes of ESTM."

[52] The Appellants have failed to satisfy the Court on the facts that the investigatory suspensions imposed on them so altered the contractual relationship between the Appellants and the Ministry of Education as to amount to an infringement of their right to work.

Alternative Placement

[53] The Appellants contended that no offer of alternative placements at other schools was made by the Ministry of Education and Awich JA erred in finding as a fact that both Appellants had been offered alternate posts. The Appellants are correct in saying that since the suspensions of April 7, 2008 an offer of alternative placement in June 2013 was made to Mrs. Lucas which was met by a counter-offer, to which there has been no response. Mrs. Carillo has since reached the age of retirement from work. However, these facts are of little significance on the question whether the suspensions infringed the Appellants' right to work under section 15(1) of the Constitution, based on the reasoning set out above. Neither are they dispositive of any other issue raised in this appeal.

Equal Protection of the Law and Protection of the Law

[54] The Appellants further submitted that their right to protection of the law under sections 3(a), 6(1) and 6(7) of the Belize Constitution was infringed by a denial of their right to be heard in respect of the investigative process and the 2008 Report. No further content for such right was raised in argument so no other alleged infringement of such right falls to be considered. The Appellants challenged the findings of the Court of Appeal that there was no breach of the equal protection clause which extends only to the court process (and was therefore not applicable to an administrative hearing or process[18]) and was not applicable to the investigative process or the report prepared by the Investigative Team, since it was not charged with determining the Appellants' rights, and/or was not charged to take disciplinary

[18] Supra, fn. 2 at [64].

action against the Appellants.[19] The Appellants also argued that their right to protection of the law under section 3(a) was violated, in the circumstances of the case, as a result of: (a) the appointment of the Investigative Team by the Minister of Education, (b) the manner in which the Investigative Team conducted their investigation and prepared their report and (c) their suspension by the Chief Education Officer.

[55] It would be convenient to take these grounds together. The relevant sections of the Belize Constitution are set out below:

> "Section 3(a):
>
> 3. Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –
>
> (a) life, liberty, security of the person, and the protection of the law;
>
> Section 6(1):
>
> 6(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
>
> Section 6(7):
>
> (7) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time."

[56] The Appellants submitted that section 3(a) of the Belize Constitution together with section 6 sub-sections (1) and (7) gave the Appellants a right to be heard during the investigation. The Appellants took issue with the finding of the Court of Appeal that since the Investigative Team was not charged with deciding rights and

[19] Supra, fn. 2 at [71] and [84].

obligations they had no right to a hearing as part of the constitutional right to the protection of the law.

[57] The Respondents in reply submitted that section 6 did not apply to investigations and that section 6(1) was not applicable to administrative hearings and processes. Reliance was placed on *Meerabux v Attorney-General.*[20] We have not derived much assistance from that case since the issue there was whether the Belize Advisory Council, an independent tribunal set up by the Governor-General to advise him on the removal of a judge, was governed by the provisions in section 6(8) of the Constitution relating to public hearings by courts or authorities endowed with powers to determine the civil rights or obligations of others.

[58] As regards the amplitude of the protection of the law in section 3(a) and 6(1) of the Constitution of Belize, the case of *Attorney-General and others v Joseph and Boyce*[21] provides useful guidance, particularly where de la Bastide P and Saunders JCCJ said:

> "the right to the protection of the law is so broad and pervasive that it would be well-nigh impossible to encapsulate in a section of a Constitution all the ways in which it may be invoked or can be infringed."

[59] Accordingly, it is arguable that "the protection of the law" includes not only access to the Court (see *Attorney General v McLeod*[22]) but also to administrative tribunals with power to affect constitutional rights or rights under the Constitution of an individual (see *AG v Joseph & Boyce*; *Inniss v Attorney-General*[23] and *Fraser v Attorney General*[24]). However, even though "the protection of the law" is a broad spectrum right, the limits delineated by Lord Diplock in *Harrikissoon v Attorney-General* [25] are still applicable. Lord Diplock there warned that the notion that a failure by an organ of government or a public authority or public officer to comply with the law necessarily entitled a breach of some human right or fundamental

[20] (2005) 66 WIR 113.
[21] (2006) 69 WIR 104.
[22] [1984] 1 WLR 522, 531.
[23] [2008] UKPC 42.
[24] (2008) UKPC 25.
[25] [1980] AC 265, 268.

freedom was fallacious. Thus the idea that the unlawful suspension, the allegedly unlawful appointment of the investigatory team, their investigation and report, necessarily constituted without more a breach of section 3 (a) of the Constitution is misconceived.

[60] The Court of Appeal met frontally the notion that the appointment of the investigating team by the Minister of Education was *ultra* vires. The Court of Appeal rejected the finding by the trial judge at [91] of her judgment that the appointment of the investigating team by the Minister of Education was illegal and *ultra* vires the Education Act.

[61] Awich JA, with whom Sosa P and Morrison JA agreed, held that the Minister had "undoubted authority and duty to act to carry out his duty under section 3 of the Act." The learned judge referred to the Minister's duty to provide "sufficient and efficient education in Belize" and under section 3(1) of the Act and section 3(2) (c) to monitor the quality and effectiveness of education at the secondary level. In the light of his statutory duty, the Minister took action to deal with a crisis facing the Ministry – "a strike and cancellation of classes which had the potential for disrupting the provision of educational services to students at ESTM for the remainder of the academic year". The Court of Appeal clearly considered that the Minister of Education in appointing the investigating team had acted according to law and in accordance with facts relevant to the exercise of that statutory power.

[62] When one takes into account the full meaning of the chapeau to section 3 all the rights protected in sections 3 to 19 inclusive of the Constitution are "subject to respect for the rights and freedoms of others and for the public interest." Therefore, when the Minister exercised his statutory power to appoint an investigating committee according to well-defined terms of reference to conduct an investigation and produce a report in order to help to resolve a crisis in an educational establishment under his watch, there was no question of any breach of the Constitution on his part or on the part of those appointed by him to investigate and report. The Minister was forced to act in the public interest. [60]Awich JA, with whom Sosa P and Morrison JA agreed, held that "[i]n my view, the Minister

appointed the investigators to gather facts, as a matter of good administration."[26] Another significant finding of the Court of Appeal regarding the status of the 2008 Report is that:

> "The report was merely intended as information on which the Minister, acting within his powers, that is, under s. 3 of the Act, could ask any person whose duty it was to take action, to consider the situation and act. Indeed the report was sent to the Board with a direction that the Board should call a meeting to discuss the findings in the report and, "take necessary decisions and actions to resolve the matter." The direction was not that disciplinary action be taken against the appellants."[27]

[63] The learned trial judge concluded at [79] of her judgment:

> "I find that pursuant to section 16 of the Education Act and Rules 94 and 98 of the Education Rules, the Ministry of Education is not authorized to appoint the Investigating Team for the purpose of commencing disciplinary action."

[64] A similar statement is repeated at [98] of her judgment.

[65] The Court of Appeal was free to draw its own inferences from the primary facts and concluded as follows:

> "No power to discipline the appellants or any member of staff was included in the terms of reference. No power to decide any rights or liability of the appellants or any member of staff was included. The terms of reference were fact-finding in nature and not disciplinary in nature."

[66] These inferences were open to the three experienced judges who heard the appeal.

[67] The findings of the learned trial judge were coloured by her inaccurate perception of the inquiry as a disciplinary inquiry. Thus, she concluded at [99] of her judgment:

> "… the Investigating Team went further than just investigation. This Investigation as can be seen by the Report condemned and criticized Management and it made recommendations …"

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[26] Supra, fn. 2 at [80].
[27] Supra, fn. 2 at [89].

[68] The Court of Appeal disagreed with this perception of the facts and held that "the conclusion by the investigating team complained about was not a condemnation of the administration … It was a preliminary impression gathered from the meetings at ESTM, to be reported to the Minister for what it was, for the purpose of any action the Minister might take consistent with his duty under s.3 of the Act…"

[69] Taking all the relevant facts into consideration, particularly the nature of the investigation, the inferences, which the Court of Appeal drew were sustainable and so will not be interfered with.

[70] The Court of Appeal's findings as to the Minister's duty to investigate and as to the nature of the inquiry have not been appealed. In the absence of any appeal against these findings one must conclude that the investigation was in the nature of a fact-finding inquiry and the role of the stakeholders was to assist the Minister with his inquiries. No right to be heard in the natural justice sense can be implied at this nascent stage. Indeed the Appellants were given full opportunity to put forward their explanations and theories about the cause of the unrest and tension at ESTM at the meeting held on March 11, 2008.

[71] Accordingly, the Appellants' rights under section 6(1) to be heard as an element of the protection of the law did not apply to the appointment of the investigating team, the conduct of the investigation or the Report produced by the Investigating Team. While the Investigating Team did have a duty to act fairly within the terms of its mandate to investigate, that duty did not give the Appellants a correlative right to be heard at common law or under the Constitution. In situations such as these, there is no universally applicable procedure or mechanistic formula that will yield an infallible answer as to whether a claimant was treated fairly. We think the Court of Appeal came to the right conclusion.

Section 6(1) and the investigation and suspension

[72] The Appellants took issue with the finding of Awich JA that since the investigation and suspension were regarded as a preliminary stage, the right to be heard implicit in sections 3(a) and 6(1) of the Constitution were not engaged.

[73] Counsel for the Appellants relied on *Rees v Crane*[28] for the proposition that where the allegations are serious and there was potential damage to one's reputation, the stage of the investigation (whether it was preliminary or not) is not the governing consideration. In such circumstances, fairness would require that an opportunity be given a person to reply to allegations even at a preliminary stage. *Rees v Crane* dealt with the removal or dismissal of a judge from office held under the Constitution according to the procedure prescribed by the Constitution. The only grounds for removal were infirmity of mind or body or misconduct. Referral of the issue of the judge's dismissal to the President involved a decision by the Judicial and Legal Services Commission at which the judge had no opportunity to be heard. The mere referral implied that there was a *prima facie* case that the judge was mentally or bodily infirm or had misconducted himself. In that context, the Privy Council held that even at that initial stage of the constitutional procedure for dismissal the judge had a right to be heard.

[74] In the instant case, the Court of Appeal held that the investigation undertaken by the Minister was a fact-finding inquiry into the cause of unrest and tension at ESTM and was not a disciplinary inquiry. There has been no appeal from that finding. The nature of the inquiry was explained to the participating teachers, students and also the Appellants. The inquiry did not, as it did in *Rees v Crane*, imply that a body appointed under the Constitution had reached a conclusion at least on a *prima facie* basis that the Appellants could no longer perform their professional duties.

[75] The recent case of *Gafoor v Attorney General*[29] was similar to *Rees v Crane* but involved the removal of a member of a constitutional body, the Integrity Commission. The member was suspended by the President while he investigated whether he would exercise his discretion to remove the member "for inability to discharge the functions of … office whether arising from infirmity of mind or body or any other cause, or for misbehaviour" pursuant to section 8(2) of the Integrity in Public Life Act 2000. In the result Kokaram J held that the member was afforded

[28] [1995] AC 321.
[29] CV 2012 – 00876 (unreported).

a sufficient opportunity to be heard by the President and was in fact heard prior to the suspension.

[76] While the Court accepts that there may be cases where the protection of the law under section 3(a) and 6(1) might require that a person whose rights may be affected be afforded an opportunity to be heard at an early or preliminary stage of the decision-making process, however, for the reasons set out above[30] the investigation initiated by the Minister into ESTM is not such a case, as the Court of Appeal rightly held.

[77] In concluding that the Court of Appeal was right, we are aware that in the field of suspensions pending investigation, the cases are not always consistent in treating a right to be heard as not arising at a preliminary stage[31]. In our view, there is no formulaic answer to the problem and each case must be decided on a careful examination of its own particular facts. We are satisfied that the Court of Appeal could properly reach the conclusion it arrived at on the facts.

Equal protection under section 6(1) without reference to discrimination

[78] The Appellants urged the Court to disregard what Counsel described as "the very narrow interpretation" of section 6(1) in *Fort Street Tourism Village v Attorney General.*[32] In that case, the claimants sought a declaration that their rights under section 6(1) of the Constitution had been infringed when the defendants allowed Fort Street Tourism Village Ltd. to discriminate against them or subject them to unequal treatment by erecting concrete structures across a boardwalk that blocked access to their businesses by cruise ship passengers. The Court of Appeal held *inter alia*, that the claimants had not established any discrimination within the ambit of section 16(1) of the Constitution. Nor could they show that Fort Street Tourism Village Ltd. was a private entity or agent of the State implementing any legislation discriminating against the claimants. It is perhaps unfair to suggest, as counsel for the Appellants appeared to submit, that the Court of Appeal in fact held that there

[30] See [43] – [46] and [54] – [55] above.
[31] Compare *Lewis v Heffer* [1978] 1 All ER 354; [1978][1 WLR 1061 with *Furnell v Whangarei High Schools Board* [1973] AC 660 where a majority of the Privy Council held that the principles of natural justice did not apply.
[32] Supra, at fn. 10.

could be no breach of section 6(1) unless unlawful discrimination within section 16(3) of the Constitution was established.

[79] In a further attempt to establish a breach of section 6(1) of the Constitution the Appellants submitted that section 6(1) of the Constitution (equal protection of the law without discrimination) had to be read in conjunction with section 3(a) (protection of the law). In this regard, the Appellants relied on *Bhagwandeen v Attorney General*[33] where a police officer who was acquitted of serious criminal charges and reinstated after suspension brought a constitutional motion claiming that he had been discriminated against when the Commissioner of Police failed to recommend him for promotion contrary to section 4(b) (equality before the law) and section 4(d) (right to equality of treatment by any public authority) of the Trinidad and Tobago Constitution. The police officer's claim was ultimately dismissed because he had not established a true comparator for the purposes of the claim. Lord Carswell held that a person who alleged inequality of treatment "or its synonym discrimination" had to show that he or she was treated differently from other persons similarly circumstanced.

[80] That theme was taken up by Lady Hale in *Public Service Appeal Board v Maraj*[34] in observing that the rights laid down in section 4 of the Trinidad and Tobago Constitution are:

> "free-standing rights, which exist irrespective of any discrimination on the enumerated grounds … The same must be true of all the other rights in the list, including the right to equal treatment either by the law itself or by public authorities."

[81] Counsel for the Respondents rejected the proposition that section 3(a) of the Belize Constitution (the equivalent of section 4(b) and 4(d) of the Trinidad and Tobago Constitution) creates free-standing rights. We do not propose for the purpose of this case to decide whether section 3(a) is simply pre-ambular (see *Grape Bay Ltd. v AG of Bermuda*[35]; *Campbell-Rodriques v Attorney-General of Jamaica*[36] and

[33] (2004) 64 WIR 402.
[34] (2010) 78 WIR 461 at [27].
[35] [2000] 1 WLR 574.
[36] [2007] UKPC 65.

Newbold v Commissioner of Police[37]) or an enacting provision (*Société United Docks v Government of Mauritius*[38]). Whether section 3(a) creates free-standing rights or not, the Appellants have not succeeded in proving that they were treated differently from another similarly circumstanced comparator. Thus their constitutional claim under the equal protection clause fails at the first hurdle.

[82] In advancing their argument on equal protection the Appellants cited the treatment of Mr. Elbert Worrell, a former principal of ESTM as an actual comparator. However the comparison is inapposite given that the proceedings against Mr. Worrell were disciplinary proceedings. The Court of Appeal held the proceedings against the Appellants were not disciplinary in nature and there has been no appeal against that finding. It is true that the Board of ESTM erred in placing Mr. Worrell on indefinite suspension without following the statutory procedure for disciplinary suspensions of informing him of the specific charges against him. The Board later corrected that error, but there was never any question that the suspension was disciplinary and not investigatory.

[83] For the reasons set out above the Appellants have failed to prove any breach of their rights under sections 3(a) and 6(1) of the Constitution.

Breach of Section 6(1) of the Constitution and Imputed Knowledge

[84] The Appellants have argued that the Court of Appeal erred in law/misdirected itself in concluding that there was no breach of section 6(1) of the Belize Constitution, since the Appellants knew or must be taken to have known, that before any disciplinary action was taken, that they would have been afforded an opportunity to respond[39] and although the suspensions were unlawful, they were not arbitrary or whimsical but rather were for "a reason.[40]

[85] The Court of Appeal held that the Appellants were familiar with the procedure with regard to a disciplinary suspension by reason at least of Mrs. Lucas' membership of the Board of ESTM. Counsel for the Appellants contended that such knowledge

[37] [2014] UKPC 12.
[38] [1985] AC 585 (PC).
[39] Supra, fn. 2 at [88].
[40] Supra, fn. 2 at [102].

or supposed knowledge in no way mitigated the breach of their constitutional rights since they suffered humiliation and were scandalized before they became aware of any specific allegations. The Appellants also argued that there would always be a reason for initiating disciplinary proceedings but that did not automatically mean that a person was not entitled to fairness and protection of the law.

[86] While there is force in the Appellants' submission that knowledge imputed to the Appellants is no bar to a finding of breach of section 6(1), the first hurdle in the argument must be whether there was a breach of the right to be heard implicit in section 6(1) of the Constitution. None has been established.

[87] Counsel for the Respondents contended in riposte that section 6(1) rights do not extend to administrative bodies including investigatory bodies established by the Ministry of Education. The common law and administrative law, they argue, contain sufficient procedural safeguards to ensure that the Applicants are treated fairly.

[88] Again, because we have held that the investigative team set up by the Minister was not a disciplinary tribunal the right to be heard in the constitutional sense did not arise. There was certainly a duty to act fairly, but section 6(1) was not engaged. We would prefer not to rely on *Meerabux v Attorney-General*[41] as laying down a universal principle of general application owing to its factual matrix involving disciplinary proceedings against a judicial officer under the Constitution. In a similar fashion, in death penalty cases, for example, a mercy committee advising the Head of State would have to accord a right to be heard to a condemned prisoner: *Attorney-General v Joseph & Boyce.*[42] Similar protections do not extend in relation to the case at bar.

[89] Although the statements in the judgment under challenge as to the suspensions being for "a reason" are somewhat curious, upon consideration of the reasoning of the Court taken in the round, it appears that they refer to the fact that these proceedings were investigatory and that the reason for the suspensions was

[41] Supra at fn. 17.
[42] Supra, at fn. 18.

investigatory and not disciplinary. In any event since we have found no breach of constitutional rights, the issue of imputed knowledge does not arise.

Vindicatory Damages for Breach of Constitutional Rights

[90] The Appellants also mounted a challenge to the decision of the Court of Appeal in declining to make an award of vindicatory damages for breach of their constitutional rights despite the fact, so it was argued, that they had not been in receipt of their annual salary increments up to the hearing and determination of the appeal and had suffered other loss such as their inability to practise their profession.[43] Non-payment of increments, however, has since been rectified.

[91] Counsel for the Appellants in her oral submissions sought to invoke the wide but discretionary remedies for breach of constitutional rights, with particular focus on the recovery of vindicatory damages. Vindicatory damages are awarded to vindicate a constitutional right by (1) reflecting the sense of public outrage; (2) underlining the importance of the constitutional right and (3) deterring future breaches: *Attorney General of Trinidad and Tobago v Ramanoop.*[44] Since the Appellants have established no breach of their constitutional rights no award of damages, vindicatory or otherwise, falls to be made. Even if the circumstances detailed at [12]-[29] above had revealed such a breach, no occasion for vindicatory damages would have arisen in respect of the Appellants in such circumstances suffering distress or embarrassment or feeling "scandalized". The Appellants have to accept that in the public interest their offices require a measure of accountability and that in the circumstances of this case they have the adequate protection of the law in the laws relating to defamation, malicious falsehood and judicial review.

Disposal

[92] The Court of Appeal agreed with the learned judge that no breach of a constitutional right was established, but did not draw the same inferences from the primary facts as the learned judge. The Court of Appeal also disagreed with the learned judge on the law relating to the scope of the Minister's powers to investigate. The Court of

[43] Supra, fn. 2 at [109].
[44] [2006] 1 AC 328 (PC) at [19]

Appeal also considered the proper inferences from the legal nature of the Minister's powers and the undisputed facts, that the inquiry was investigatory and not disciplinary. It was open to the Court of Appeal to hold in those circumstances that the Appellants had no formal right to an adversarial hearing as opposed to an opportunity to give their version of the facts to the official investigators. In those circumstances, the judgment of the Court of Appeal is affirmed and the appeals are dismissed with costs payable by the Appellants to be taxed if not agreed.

JUDGMENT OF THE HONOURABLE MR JUSTICE ADRIAN SAUNDERS

Introduction

[93] The main issue in this appeal concerns the redress due to Mrs Juanita Lucas and Mrs Cecilia Carillo ("the appellants" or "the ladies") on account of their suspension from duties. In particular the appeal raises the question whether any of their fundamental rights was violated so as to give rise to appropriate constitutional redress including an award of damages. I am in disagreement with the court below and with my colleagues in the majority. I believe the constitutional right of the ladies to the protection of the law was infringed and I would have awarded them suitable relief including an award of damages.

The parties to the appeal and the issues to be resolved

[94] The appellants were respectively the Principal and Vice Principal of the Escuela Secundaria Técnica de México ("ESTM"), a government-aided educational establishment. They are both well qualified educators with considerable experience in the field of Education. In 2003 Mrs Lucas obtained a Masters degree in Educational Leadership from the University of Florida, USA. She held the position of Chairperson of the Corozal Regional Education Council (CREC) between 2004 and 2005 and following that, she was Chair of the Association of Principals of Government Secondary Schools from 2005 to 2007. Mrs Carillo also holds a Masters degree in Education from the University of North Florida which she obtained in 1998 and she too has been involved in education for many years.

[95] In April 2008 both women were suspended, albeit with full pay, from their posts at ESTM. They applied for judicial review. In the same Fixed Date Claim Form that

commenced their judicial review applications, they also alleged that their constitutional rights had been violated. In particular, they cited the right to work[45], the right to equal protection of the law[46], the right to a fair hearing[47], and the right not to be discriminated against on the ground of one's political opinion[48]. They requested reinstatement, a quashing of the suspensions, damages and such other relief as the court considered just.

[96] The respondents to the appeal are the Chief Education Officer, the Minister of Education, members of an investigatory team established by the Ministry of Education and the Attorney General. For ease of reference I refer to them collectively either as "the respondents" or "the Ministry".

[97] In light of the claims made and the decisions of the courts below, the principal issues for determination are: i) whether it was appropriate for the ladies to allege constitutional breaches in their judicial review application ("the parallel remedies issue"); ii) whether any of their constitutional rights was violated; iii) assuming constitutional rights were violated, whether they were entitled to damages and iv) given that they have remained at home on full pay up to this time, how should the present impasse be resolved. Unfortunately, this is one of those cases where everyone suggests that the facts are not in dispute, but everyone seems to place a different interpretation on those facts. My background to the appellants' claims therefore requires some account of the circumstances leading up to the suspensions, an examination of the Education Act and a brief comment on the opinions rendered by the courts below.

The Background to the appellants' claims

[98] The suspensions of the two ladies took place in the wake of teacher unrest at the school. There was some indication of dissatisfaction as far back as 2005 but matters came to a boil early in 2008. On 8th January 2008, the day before the holding of a meeting of the school's Board of Management ("the Board"), five Heads of

[45] Belize Constitution s 15(1)
[46] s 6(1)
[47] s 6(7)
[48] s 16(2)

curriculum departments of the school signed a letter addressed to the Chairman of the Board. The letter complained about "the polarisation of staff and administration ("administration" was a euphemism for the appellants); the high number of teacher turn-over and teacher absenteeism, which were said to have been caused by "administration – teacher induced stress"; and the fact that although the school seemed at the time to have been highly regarded the Heads received no acknowledgment of their role in the school's successes but instead the appellants took all the credit.

[99] At the Board's meeting of 9th January 2008, at which Mrs Lucas was present performing the functions of Secretary, the letter from the Heads was read aloud. Some members commented on it. Mrs Lucas objected that her constitutional rights were being breached. The Board set about to address the complaints in the letter from the Heads of Department. A meeting with the Heads was scheduled for January 15th and actually was held on that date in the absence of the appellants. The Board also directed its Chair to meet with the appellants which the Chair did two weeks later. At that meeting the ladies were informed of generalised complaints that were being made against them. Mrs Lucas recounts these as disrespect of teachers, overworked and stressed teachers, and complaints about the tedious nature of the "weekly scheme". Mrs Lucas apparently used to insist on the meticulous preparation by teachers of weekly lesson plans and some teachers found this overly taxing.

[100] Mrs. Lucas retained counsel who, on 5th February, wrote to the Chair of the Board in relation to the 8th January letter of the Heads of Department. Counsel pointed out that the Heads' letter was "unclear" and made "no specific charge" against Mrs Lucas to which she could respond. Counsel also warned about the breach of the rules of natural justice if the Board attempted to deal with matters without giving her an opportunity to respond. Counsel indicated that he would be pleased to meet with the Board in order that matters be dealt with properly; failing which counsel was instructed to vindicate Mrs Lucas's legal and constitutional rights.

[101] On 7th February Mrs Garcia, the Chair of the Board, resigned her position. A week later Mrs Lucas saw for the first time a letter (dated 23rd January and ostensibly copied to her) addressed to Mrs Garcia and signed by 21 teachers. In this letter teachers of the school expressed their "absolute solidarity" with the January 8th letter of their Heads of Department by fully supporting the complaints and accusations earlier made by the Heads. On 28th February, Mrs Lucas was invited by the Minister of Education to hold discussions with him and other officials about the situation at the school. The Minister told Mrs Lucas that he had been hearing complaints about her and that he was sending out an investigating team to discover what the true picture was. That same day, 28th February, the teachers staged industrial action by absenting themselves from school claiming that they were ill. Caribbean people know this as "a sick-out".

[102] News of the unrest reached the media. The Press began interviewing parents of students attending the school. These interviews were broadcasted on national television. On 3rd March the Ministry's investigating team arrived at the school. The team met with Heads of Department and interviewed teachers individually. The team also organised a meeting with parents of students at the school's auditorium. Un-contradicted evidence was given about the conduct of this meeting. Mrs Lucas's husband was present although she was not. It was adduced in evidence that parents, including at least one villager who had no child studying at the school, were invited to air complaints on the public address system. Several of them used this opportunity to criticise and level accusations at the two ladies. The auditorium had no walls around it and was close to the Northern Highway so that passers-by who so desired were able to listen in as these amplified accusations were made. The meeting was described by one witness as "boisterous". Another witness, a parent of a student, said in her witness statement:

> "… I received a note inviting us to a meeting. As I arrived, I noticed that it was the Ministry of Education doing an investigation in the school. Strangely, there were parents gathered and some people from the villages who were not parents and some were even given the opportunity to speak against the Principal. I was so surprised because these were the same parents who had fully supported the Principal in all school activities and never

> complained about anything in other PTA meetings. I could not understand what was happening."

Yet another witness deposed:

> "The parents' meeting that was convened by the Investigative Team was conducted in a most unprofessional and scandalous way, in that there was a free for all by parents publicly accusing Mrs. Lucas and Mrs. Carillo of petty things, and scandalizing these two women who were very dedicated to ESTM and who brought great improvement to this school."

[103] One week later, the investigation team met separately with Mrs Lucas and her attorney and with Mrs Carillo and her attorney respectively. The team stated to each that the respective meeting was not a hearing but an "exploratory" interview so that the team could "collect the information it needs to be able to conduct a fair investigation". The lines of inquiry related to management policies. No accusations or complaints by teachers or students were put to the appellants.

[104] The investigating team met with the Board on 5th March in the presence of Mrs Lucas. The letter of 8th January written by the Heads of Department to the Board was used as the platform for the discussion. Mrs Lucas was asked why she had retained attorneys to write to the Board. She refused to answer. The Board indicated to the investigating team members that the Board fully intended to address the concerns raised in the 8th January letter of the Heads but that the recent death of Mrs Lucas's mother, the country's General Elections (which had been held on 8th February and resulted in a change of government), and the tone and content of the letter from Mrs Lucas's attorneys had slowed them down. The Acting Chair of the Board expressed the view that it was unfair for the matter to be politicised and broadcasted on the media since the Board had already started to investigate. The Board was unhappy with the Ministry for inserting itself into a situation that fell within the remit of the Board and which the Board was already handling in its own fashion. The Ministry, on the other hand, seemed to have felt that the Board was dithering and ineffective.

[105] As soon as the investigating team had completed their report the Ministry wrote to the Acting Chair of the Board directing him to convene a special meeting of the

Board for the purpose of addressing the findings in the report. Mrs Lucas was given an unsigned copy of the report on 26th March, 2008 and invited to meet with the Board the following day. Her attorneys immediately despatched another letter to the Board and to the Ministry warning, inter alia, that

> "…if it is intended that allegations will be formulated or are already formulated to which our client must respond, then it is our position that the Rules of Natural Justice must be observed which include that our client must be given ample time to respond to allegations, if any…
>
> We also note that there are conclusions made in the unsigned Report based on details our client never was confronted with formally not (sic) informally."

[106] The trial judge found as a fact that the Report "condemned and criticised" the ladies. It made definitive findings under such distinct heads as Personnel Policies and Practices; Communications Processes; Planning Practices; and Teamwork and Leadership. The Principal and slightly less so the Vice Principal, were painted in a poor light. Mrs Lucas came across as being unapproachable, autocratic, insensitive, lacking in diplomacy empathy and interpersonal skills, inconsiderate, heavy handed and excessively authoritarian. The Report stated that the Heads of department had evinced the unanimous view that the Principal and the Vice Principal "should be relieved of their duties as administrators and if that is not done then they [i.e. the teachers] will leave. Basically it is them [i.e. the teachers] or administration." The Report concluded with a recommendation that the Board should review the findings contained in it and "take appropriate decisions and actions to resolve the matter".

[107] At this juncture it is only fair to indicate here a totally different picture of the tenure of Mrs Lucas and Mrs Carillo as Principal and Vice Principal respectively. Ms Nardia Garcia was for nine years Chair of the school's Management Board. She gave evidence in these proceedings and the judge went out of her way to state that she (the judge) considered Mrs Garcia's evidence credible. According to Mrs Garcia, prior to the employment of the appellants ESTM was doing extremely poorly. The immediate previous Principal had to be fired for dereliction of duty,

students were failing, discipline among staff and students alike was lax, morale was low and there were instances of students being sexually abused by teachers. At para 11 of her witness statement Mrs Garcia stated:

> "In just a couple of months, the school came alive under the stewardship of Mrs. Lucas and Mrs Carillo. We at the ESTM Board kept hearing informal complaints by teachers, who resisted the new rules imposed by Mrs. Lucas and the new reporting requirements and the academic push by her. We would require the complaining teachers to file formal complaints so that the ESTM Board would hear the same and address them accordingly, but no complaint was formally lodged until the 8th January, 2008. In my nine years as chair, I can honestly say that Mrs. Lucas and Mrs. Carillo were the best administrators I had worked with and who honestly took their responsibilities very seriously."

[108] Certainly, at least as far as the academic performances of the school's students are concerned, Mrs Garcia's opinions are fully supported by the objective evidence presented to the court in this matter. The school records show a dramatic improvement in academic performance across all subject types after the employment of the two ladies. Further, as mentioned earlier, the evidence, again un-contradicted, is that institutionally, although the school was in awful shape when they took over as Principal and Vice Principal, in three years they had turned things around to the extent that in 2007 the school was held up as a model for all the schools in Belize when it won the coveted "Most Outstanding School of the Year" award.

[109] To continue with the historical narrative, when the Board met on 27th March under the chairmanship of Dr Myers, the Acting Chair, Mrs Lucas was requested to excuse herself. The Board proceeded to address the directive from the Ministry referred to at [105] above. The overwhelming sentiment expressed at the meeting was that members of the Board had not been afforded sufficient time to read and digest the report of the investigating team so as to take any firm decisions there and then. Dr Myers also expressed his concern that the report had omitted, in some instances, and misinterpreted, in others, information he had provided them. The unmistakable impression to be gleaned from the Minutes of the meeting is that members of the Board felt they were being railroaded by the Ministry. The idea of

suspending the Principal on full pay was voiced but the meeting failed to reach a consensus. Ultimately, Dr Myers called Mrs Lucas back into the meeting room, informed her that no decision was made and recommended "that the Ministry resolves the situation". Like Pilate, he then washed his hands of the unsavoury matter. He tendered his resignation.

[110] On April 1st and 2nd, the teachers staged another sick-out. A national television news programme, *7 News*, interviewed parents of students and reported that "*Education Minister Patrick Faber today confirmed that he is listening to those complaints, and thought that the findings of the investigation were significant to give the Board of Directors material to move against the Principal*". By this time, the Corozal Regional Education Council (CREC) had become involved in the situation as the Ministry of Education had referred the report's findings to CREC. The Heads of departments had also themselves written off letters to CREC. Mrs Lucas was not made privy to these letters. CREC wrote to the Ministry expressing its view that the Ministry should intervene as the problem at the school had "escalated and reached an emergency situation and that the school will not be able to operate smoothly if the Principal and Vice Principal are physically present". CREC recommended that the appellants be suspended with pay to allow full investigation of the situation at the school.

[111] A copy of the investigating team's Report was leaked to *7 News* which commented on it on 2nd April in the wake of the sick-out. That same day, Mrs Lucas's attorney suggested to her that the Minister was willing to settle with her out of court. The Ministry was prepared to give her "a promotion" but she needed to make a decision within 2 days. Mrs Lucas requested, without prejudice, that the Ministry place its proposal in writing. The Ministry did so two days later in a letter which Mrs Lucas's attorney received and read aloud to her over the telephone. The letter informed Mrs Lucas that she was being offered a position as a 'Teacher on Special Assignment' with further details to be conveyed in due course. She was to be placed on paid leave for two weeks from 7th April, 2008 and she was advised that the Corozal

District Education Manager will be at the school on Monday 7th April, 2008 at 8:00 for her to hand over relevant keys, documents and materials.

[112] The promotion seemed to Mrs Lucas like a demotion. As soon as she had sight of the letter she replied to the Chief Education Officer reiterating that her attorney was not instructed to accept any offers made by the Ministry nor had she accepted any such offer. Instead she desired to remain as Principal of ESTM. She also noted that two officials were at the school that morning claiming that they had a directive to accept from her the relevant keys, documents and material in relation to ESTM.

[113] Mrs Carillo also had received a proposal of sorts from the Ministry. On 3rd April she was verbally informed that she was to be transferred as vice-Principal of a government school, according to her, "at an unknown location or accept compensation, the details of which [she] was not provided." She too asked that the proposal be placed in writing. The following day she was pressed for an answer. She gave her answer on 5th April when she indicated that she would "not accept any proposal and await a decision from the Ministry of Education."

[114] With the teachers on strike yet again, CREC and the teaching staff breathing down its neck demanding the removal of the appellants, and the Board without its Chair and Vice Chair, the Ministry took it upon itself to suspend the appellants on 7th April, 2008 for one month with full pay. Mrs Lucas was told by the Ministry "you will be informed of specific allegations, if any, are to be brought against you. In that case, you will be afforded the opportunity to be heard in your own defense in the presence of your agent." To date, no such specific allegations have been brought to the attention of the appellants.

[115] Some time later, in April 2008, before the term of the suspensions had run their course, Mrs Carillo's attorney wrote to the Ministry protesting that the establishment by it of the investigating team and her subsequent suspension were unlawful. The attorney called on the Ministry to revoke the suspension and to reinstate Mrs Carillo.

[116] On 22nd April the ladies applied successfully to the court for permission to bring judicial review proceedings. In her affidavit accompanying the application for permission, Mrs Carillo noted that she had been an educator for most of her life and that she had earned a reputation of being very professional and dedicated to education. She indicated that she had been gravely affected by her "very public prosecution" and she believed that her good name had been irreparably tarnished without being given an opportunity to defend herself. She also noted that her child attended ESTM and had become embarrassed and reluctant to attend school.

[117] Mrs Lucas, in her affidavit, noted that her husband was also a teacher at ESTM and he had suffered emotionally because of the actions taken against her. She resides in a community many of whose students attend ESTM and so she and her family experienced social pressures because of her "public prosecution". Her children, then 13 and 10 respectively, refused to watch the evening news on the television, for fear of hearing negative Press about their mother on the news. She considered that her reputation had been sullied and perhaps irreparably so.

[118] On 7th May, 2008 the appellants received separate letters from the Chief Education Officer stating, inter alia,

> "…After giving due consideration to all events that transpired in relation to the disruption of classes at ESTM on February 28, 2008 and thereafter, I have concluded that opportunity needs to be given to the Board of Management to execute its responsibilities where managing the affairs of the school is concerned. This decision is arrived at based on the following considerations:
>
> (1) The Board abdicated its responsibility to investigate and make recommendations to the Chief Education Officer regarding the disruption at the school because members felt threatened by a letter received from your attorney.
>
> (2) The Board was destabilized due to the resignation of the Chairperson and the subsequent resignation of the acting Chairperson.
>
> I am therefore extending your suspension with pay to June 27, 2008 to allow the Board opportunity to conduct necessary investigation and review of the disruption of classes at ESTM. This date may be brought forward pending

> the deliberations and decisions of the Board. At the completion of its review, the Board will make recommendations on what disciplinary measures, if any, should be taken."

[119] No further investigation was ever carried out and to date, the ladies have not been found culpable of any wrong doing. Yet, for almost 7 years, they have been, in effect, on suspension, receiving salary from the public purse while sitting at home unproductive, deprived of the satisfaction that comes from contributing meaningfully, as professionals, to the advancement of one's society. On each side it is an unsatisfactory situation.

The Education Act

[120] The delivery of education services is governed by The Education Act ("the Act"). Section 3 of the Act is in issue in this case. The section obliges the Ministry, under the general direction of the Minister, to work in partnership, consultation and cooperation with education partners for the efficient provision of education in Belize. In discharging these functions the Ministry establishes goals and policies, provides support systems for the effective delivery of educational services and monitors the quality and effectiveness of education (Section 3(2)). District Education Councils (such as CREC) are established to assist the Ministry in managing and monitoring the delivery of educational services in each District (Section 3(3)). Government-aided schools, such as ESTM, must appoint a Board of Management (Section 14). The Board is responsible for the proper and efficient organisation and management of the school. With assistance from and in partnership with the Government the Board is also responsible for providing the support systems required to deliver appropriate education to students at the school (Section 15).

[121] Section 16 is pivotal to this case. It is sufficiently important to be set out almost in its entirety because the lawfulness of the suspensions turns on its provisions:

> 16. The manager or managing authority of a government or government-aided school or institution shall have the authority to appoint, transfer, release, suspend or dismiss members of staff of their respective schools or institutions subject to the following conditions in so far as same are applicable –

(a) …

(b) where the manager or managing authority proposes to terminate the appointment of or to release, suspend or dismiss a teacher, a statement in writing of the grounds for such action shall be served upon such teacher and copied to the Chief Education Officer;

(c) the teacher and/or his agent shall be given a reasonable opportunity to be heard in his own defence and a statement of the findings of the manager or managing authority shall be forwarded to the Chief Education Officer;

(d) every teacher aggrieved by an order of release, suspension, dismissal or termination from service under this section may, within thirty days of the receipt of such order, proffer an appeal to the Chief Education Officer:

Provided that the Chief Education Officer may entertain the appeal after the expiry of thirty days if he is satisfied that the appellant was prevented by sufficient cause from proferring the appeal within the said period of thirty days;

(e) if the aggrieved teacher is not satisfied with the decision of the Chief Education Officer, he may, within fourteen days of the receipt of the decision, submit the case to the Arbitration Panel constituted in accordance with section 46 of this Act.

[122] It is to be noted that section 16 confers *on the Board* and not the Ministry the authority to suspend teachers; that where the Board proposes to suspend a teacher, a statement in writing of the grounds for such action must be served upon such teacher and copied to the Chief Education Officer[49]; that the Chief Education Officer is constituted an appellate body to review suspensions[50]; and that a suspended teacher who is dissatisfied with the decision on review of the Chief Education Officer is entitled to a speedy hearing before an Arbitration Panel[51].

[123] Section 20 of the Act authorises the Chief Education Officer or any Education Officer deputed by that official to enter school premises for the purpose of making enquiries and discharging such duties as may be imposed by the Act or rules made

[49] s 16(b)
[50] s 16(d)
[51] S 16(e)

under the Act. If the Board of Management commits any breach of the provisions of the Act, the Chief Education Officer is entitled to give notice in writing to the Board requiring it to comply with such provisions or to close down the school (Section 21). Finally, section 46 makes provision for the appointment of an Arbitration Panel to arbitrate cases referred to it under section 16(e).

The judgment of the Trial Judge

[124] On 13th October 2010 the trial judge gave her judgment. Some two and a half years had elapsed since the suspensions. The judge agreed that the appellants were indeed wrongly suspended and that their due process rights had been flouted including their rights to be heard, to be treated with procedural propriety and fairness, and also their legitimate expectations. The judge made no finding of political discrimination.

[125] The judge quashed the suspensions and ordered the Board promptly to comply with s16 of the Education Act to take such disciplinary or other action against the appellants as may be warranted. The judge declined to order reinstatement reasoning that it would not be in the best interests of the administration of the school to make any such order. On the appellants' claims for damages for breaches of the Constitution, the judge disagreed that any of their constitutional rights had been infringed. The judge stated that the actions of the Ministry, although wrong in law, were not irrational or arbitrary or motivated by political bias or spite. Instead, the judge found that the Ministry had acted in good faith out of genuine concern about the grave situation at the school and a desire to calm the undoubted tensions that existed there.

The judgment of the Court of Appeal

[126] The two ladies must have welcomed the formal quashing of the suspensions, but it was a Pyrrhic victory. They remained, even up to now, practically on suspension with full pay. The judge's failure to go further and determine that their constitutional rights had been infringed meant that they had obtained no consequential or meaningful relief. They appealed this failure to the Court of Appeal. The respondents did not cross-appeal and their neglect to do so signified

that they had accepted the trial judge's orders and, by extension, the critical findings made many of which supported the making of those orders. The only question before the Court of Appeal was whether, on the strength of the judge's findings, which everyone had accepted or was deemed to have accepted, any constitutional rights of the ladies were violated. The judgment of the Court of Appeal did not address that question in the normal way. What that court did was to re-interrogate the un-appealed factual findings of the judge, contradict them and substitute them with different factual findings. On this fresh basis, the Court of Appeal, as has this Court's majority, dismissed the appeal of the ladies and exonerated the respondents from constitutional breach.

[127] In giving its judgment the Court of Appeal first took issue with the fact that the trial judge did not put the ladies to their election "whether to proceed with the judicial review claim, or the claim under the Constitution for the protection of fundamental rights." In the opinion of the court, it was "improper and unreasonable" for the ladies to pursue constitutional relief. The court considered that their claims "ought to have been restricted to judicial review of administrative action or contract of employment". I refer to this issue as the "parallel remedies" proposition. The cases cited by the Court of Appeal in support of it were *Jaroo v AG*[52] and *AG v Ramanoop*[53].

[128] In considering the appellants' claim for damages for constitutional breach, the Court of Appeal concentrated its attention on the fact that the appellants had been receiving their monthly salaries at all times. For that reason the court concluded that they had suffered no damage. The court's view was that, although the suspensions were not in compliance with the statute, the Ministry was motivated in good faith by "the disintegration" of the Board and the need to engage in a convenient quick administrative fix in all the circumstances. In contradiction to the express finding of the trial judge, the Court of Appeal held that the Board had

[52] (2002) 59 WIR 519
[53] (2005) 66 WIR 334

demonstrated an unwillingness or inability to perform its statutory duties in the face of the emergency situation at the school.

[129] The Court of Appeal agreed with the trial judge that the Ministry had not infringed the appellants' right to work, but on a different ground. The judge had said that the right to work had not been violated because the ladies had at all times been in receipt of their salaries. The Court of Appeal preferred to examine the right to work in the context of the public interest and the interests of the employer. The court considered that an infringement of the right to work is usually established where there is a denial of constitutionally guaranteed employment in the public service, or unconstitutional discrimination has fettered or denied employment or pursuit of a profession or occupation, or a third party, such as a trade union or professional body, has interfered in a contract of employment. The court found that none of this obtained here.

[130] The Court of Appeal gave specific reasons for holding that the fundamental right to protection of the law had not been violated. The court held that a) this claim had not been made on the claim form; b) the right to protection of the law related to unhindered access to an independent court of law and was, as such, inapplicable to a hearing by an administrative authority; and c) the investigating team that prepared the report which led to the suspensions was not a body charged with deciding rights or obligations. The Court of Appeal criticised the ladies for lodging complaints of constitutional violation. The court adjudged that these complaints served only "to enlarge and complicate the case".

The grounds of appeal to this Court

[131] The grounds of the appeal to this Court were similar to those that were argued before the Court of Appeal. The ladies continued to insist that their fundamental rights to work and to protection of the law had indeed been violated and that therefore, their redress should have included constitutional relief including damages. They wanted this court to reverse the judgment of the Court of Appeal and grant them appropriate relief and their costs.

Issue (i) Did the Appellants contravene the Parallel remedies principle?

[132] The cases of *Jaroo v AG*[54] and *AG v Ramanoop*[55] restate a principle that where there is a parallel remedy, a citizen should not give constitutional relief unless the circumstances of which complaint is made include some feature which justifies resort to a claim for breach of a fundamental right. This principle is buttressed in some Caribbean constitutions by a specific proviso that mandates the court to decline constitutional redress where a parallel remedy exists.[56] The Belize Constitution has no such proviso but few will doubt that Belizean courts are still expected to disapprove of needless resort to the redress provision of that Constitution (i.e. section 20).

[133] In applying the parallel remedies principle what is sometimes overlooked is that *Jaroo* and *Ramanoop*, like *Harrikisoon v The AG*[57], were not cases where leave had been sought or obtained to seek judicial review of administrative action. These cases were all brought before new Civil Procedure Rules were promulgated and they all involved instances where litigants launched *constitutional* Motions for which no prior permission was necessary and where, normally, courts must give priority to the hearing of such a Motion. In *Harrikisoon*, where Lord Diplock expressed the principle, there was a statutory procedure available to secure the redress to which Mr Harrikisoon was entitled. Lord Diplock's observation is therefore unexceptional. Courts will frown on the filing of a constitutional Motion in lieu of a judicial review action when the latter is perfectly capable of yielding all the relief the litigant requires. Proceeding by constitutional Motion may well be an impermissible strategy either for unfairly jumping the litigation queue or evading the scrutiny of a judicial review judge charged with filtering out groundless or hopeless cases. A similar principle is applied where the litigant has adequate recourse in private law but chooses to proceed by way of constitutional motion. In those instances the courts will entertain a constitutional action only if the

[54] (2002) 59 WIR 519
[55] (2005) 66 WIR 334
[56] See for example Constitutions of The Bahamas art.28(2); Barbados s.24(2); Bermuda s.15(2); and Turks and Caicos s.21(2)
[57] (1980) 31 WIR 348

circumstances disclose some "special feature" that justifies going beyond private law remedies and invoking the constitution.

[134] The above cases are to be distinguished from a situation where a claim for judicial review is filed, for which permission has been granted, and which claim includes allegations of constitutional violations made in an effort to seek redress that cannot be had from any of the traditional judicial review remedies. It is inapt to apply *Harrikisoon's* abuse of process/parallel remedies proposition to such a case. As Sharma CJ indicates in *Belfonte v AG*[58], the determining factor in deciding whether there has been an abuse of process is not merely the existence of a parallel remedy but also, the assessment that the allegations grounding constitutional relief are being brought "for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action". If one already has obtained leave to bring judicial review proceedings, the addition of serious claims for constitutional relief does not avoid anything of the sort.

[135] *Harrikisoon* must also be considered in light of new procedural rules which simplify the processes for initiating claims, strengthen the court's extensive case management powers and specifically authorise litigants to claim damages, as relief under the Constitution, in judicial review proceedings. Part 56 entitles a litigant to include in an application for judicial review a claim for any other relief or remedy that arises out of or is related or connected to the subject matter of the claim. Part 56 specifically permits a litigant to seek constitutional relief (and in particular, damages) in a judicial review application. These are sensible procedural provisions. A pure administrative judicial review application (what we used to refer to as a writ for a prerogative order) yields inflexible remedies that may be hopelessly inadequate and the court should discourage a multiplicity of actions when one alone can suffice. The onus is on the court, not the litigant, to manage filed cases and police the appropriate use of any jurisdiction conferred on the court. The civil procedure rules encourage and equip judges with all the necessary tools so to do.

[58] (2005) 68 WIR 413 at [18]

At an early stage the court may dismiss a claim for constitutional relief if it is vexatious or has no realistic prospects of success.

[136] I do not regard the appellants' complaints of constitutional violations as unduly enlarging or complicating the case. The appellants were entitled to claim redress for infringement of their fundamental right to protection of the law. Given the present state of the law it is only if such a claim (or some other allegation of a fundamental rights contravention) were successful that they stood any chance of being granted relief that went beyond the rigid options available under pure administrative judicial review. The most efficacious way of making that claim was to include it in the Fixed Date Claim Form that commenced their judicial review action. The other side took no objection to that process, nor could they, and I respectfully must disagree with the Court of Appeal that this step could be characterised as an abuse of process. In my view the appellants did not contravene the parallel remedies principle.

Issue (ii) Was the appellants' right to protection of the law infringed?

[137] Apart from its treatment in section 6 the right to protection of the law is referenced in section 3 of the Belize Constitution. Section 3 does more than merely pave the way for the succeeding detailed rights. The text of section 20 of the Belize Constitution actually suggests that the rights declared in section 3 are specifically enforceable but, even without that suggestion, since the Constitution is to be read as a whole, section 3 should be construed in harmony with the detailed rights. Section 3 provides a useful reference point from which the court can expound the meaning of those detailed rights. It contextualises them and so may assist in illuminating, clarifying and even supplementing their content.[59] In particular, resort may be had to section 3 in order to appreciate the scope of the rights detailed in section 6.[60]

[138] The right to the protection of the law is broad and pervasive. The right is anchored in and complements the State's commitment to the rule of law. The rule of law

[59] See for example *Minister of Home Affairs v Fisher* [1980] AC 319
[60] See: *Joseph & Boyce v The AG* [2006] CCJ 3

demands that the citizenry be provided with access to appropriate avenues to prosecute, and effective remedies to vindicate, any interference with their rights. The citizen must be afforded "adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power".[61] The right to protection of the law may successfully be invoked whenever the State seriously prejudices the entitlement of a citizen to be treated lawfully, fairly or reasonably and no cause of action is available effectively to assuage consequences to the citizen that are deleterious and substantial. There is therefore likely to be a breach of the right whenever a litigant is absolutely compelled to seek vindication under the Constitution for infringement by the State of a fundamental right. But even where no other fundamental right is impacted, the right to protection of the law may also be implicated when there is a violation of due process and a denial of the citizen's expectations of fairness, procedural propriety and natural justice. One must quickly caution, however, that since the law usually provides avenues to pursue these latter violations, not every instance of them may be escalated up to a *constitutional* breach. Courts will regard as an abuse of jurisdiction resort to the supreme law in those cases where the aggrieved person has some convenient alternative process, outside the Constitution, that gives sufficient and effective recourse, or where the breach is insubstantial. That is the essential point of *Harrikisoon* where a teacher who was unlawfully transferred elected to eschew the grievance procedure established by the relevant statute, and which afforded him effective relief, and contrived instead to amplify his grievance by invoking the Constitution.

[139] The majority asserts that the appellants' right to the protection of the law was guaranteed by their ability to institute proceedings for libel or slander against anyone who had defamed them. In my view this misses the point. The complaint of the ladies is not so much that their reputations were damaged by specific words uttered by any particular individual but that rather, in relation to them, the

[61] Per Wit J in *Joseph & Boyce v The AG* [2006] CCJ 3 at [ ] See also, Lord Diplock, "The Protection of the Law" October (1978) WILJ 12, 13

respondents engaged in an indiscrete and unfair process, facilitated all and sundry in unfairly and publicly criticising them, published a report that was extremely critical of them without affording them natural justice and unlawfully suspended them immediately following all the public criticism. For purposes associated with their claim for damages, these matters must collectively be regarded as a single package. The quashing order properly addressed the illegality of the suspensions. That order did nothing to compensate the ladies for the injury produced by the arbitrariness and unfairness associated with the package and, absent the constitutional claim, there was no recourse which they could access to obtain such compensation.

[140] I disagree that the appellants' claim, that they were entitled to the protection of the law, should have been dismissed on the ground that it was not pleaded. On the respective Claim Forms each of them expressly invoked section 6 of the Constitution. The entire thrust of their grievances, long before they filed proceedings, was the charge that they were being denied procedural fairness. The State had unequivocal and abundant prior notice of these allegations.

[141] I also do not agree that a person may invoke her protection of the law only in instances where she interfaces with a court of law or other body exercising judicial powers. As is pointed out by L'Heureux-Dube J in *Knight v Indian Head School Division*[62] the duty to act fairly and the duty to act judicially have their roots in the same general principles of natural justice. This is why, in *Joseph & Boyce*, this Court had little difficulty in holding that the mere non-fulfilment of a legitimate expectation by the Barbados Privy Council gave rise to a breach of the right to the protection of the law. The fact that the legitimate expectation was derived, in essence, from Executive conduct premised on an unincorporated treaty speaks to the amorphous and ubiquitous character of the right in question.

[142] According to the Court of Appeal and the majority, the appellants were disentitled to the protection of the law because the suspensions hinged on an investigation that

[62] [1990] 1 SCR 653

was exploratory in nature, one that was in the nature of a "fact-finding" exercise as opposed to a "disciplinary" inquiry. The notion of finding facts adverse to a party without first informing that party of specific allegations made against her and giving a full opportunity to contest or explain them seems unfair to me. But even if one concedes that the investigation here was intended to be merely exploratory, that the actual terms of reference given to the investigators, and the accompanying statements they and/or Ministry officials made at the time, were consistent with such an intention, in order to determine whether in fact there was fairness and procedural propriety we must go further. We must go beyond intentions and statements made and get to the substance of the matter. We must critically assess what was actually done by the Ministry and its investigators. In particular, we must consider: the content of the report generated; the procedures utilised for carrying out the investigation; the widespread publicity that accompanied the investigation; and the effect the entire process had on the appellants, their employment status and their reputations. The trial judge considered these matters and her findings are consistent with the tenor of the report and all that actually transpired in relation to the investigation and its consequences. Those findings provided the critical plank for her decision to quash the suspensions and make the un-appealed orders she made.

[143] After considering the significant body of evidence presented to her, both oral and documentary, the trial judge found, among other things, that:

a) "…there was a clear usurpation of the powers of the managing authority by the investigating team";
b) "…the Ministry [was] not authorised to appoint the investigating team for the purpose of commencing disciplinary action";
c) "…the evidence … refutes any [allegation of a] … failure by the Board to take action with regards to the complaints received by the Board against the Administration";
d) "Mrs Lucas and Mrs Carillo were put on leave with pay as a result of the findings of the … report. The evidence shows that [they] were not told of the complaints against them by the students and teachers";
e) "Can anyone say that there was no damage to the reputation of the Claimants who are Principal and Vice-Principal of ESTM? I think not".

f) "The procedure to be followed is statutorily provided for in the Education Act and the Education Rules. It does not exclude a hearing at the initial stage";
g) "This investigation … condemned and criticised management … and … the evidence shows the report was discussed in the media";
h) "…the Investigation by the Investigation Team is *ultra vires* the principles of natural justice as the Claimants were not told of the complaints against them and given an opportunity to respond to same";
i) "…the Claimants had a legitimate expectation that the said Investigating Team would have acted fairly and also the investigations would have been done *in camera*";
j) "The Board was not given adequate time to deal with the situation and in my view, [that] does not amount to a failure to act [on the Board's] part";
k) "It was unreasonable for the Ministry of Education to request the Board to make a decision on the spot without giving them an opportunity to do their own investigation";
l) "…the Board did not surrender its right to conduct its own investigation and there was no abdication of duties by the Board".

[144] The judge did not flippantly arrive at these findings. She first made a painstaking analysis of all the evidence. The conclusion that the Board had not abdicated its responsibilities, for example, was preceded by a careful consideration of the testimony given by the Chair of the Board and a specific finding that the Chair was a credible witness. The trial judge's interpretation of the content of the report is supported by an objective reading of that document. On reading it, I too have no hesitation in concluding that indeed the report condemns and criticises the appellants.

[145] As to the conclusions relating to a failure of the respondents to comport with procedural propriety, and to public embarrassment having been suffered by the appellants, the majority has belaboured the question whether the law imposed a right to be heard. As previously indicated, like the trial judge I too disagree with the view that the appellants were informed of specific accusations made against them and afforded a full opportunity to contest or explain them. I believe also that the right to protection of the law goes beyond the narrow premise of a right to be heard. The right encompasses fairness in general which must be assessed in the round. The judge's assessment proceeded along those lines. She examined all the circumstances surrounding what the ladies referred to in evidence as their "very

public prosecution". She took cognizance of their status and the indiscrete manner in which the investigation was conducted.

[146] The trial judge's findings were indicative of what, at least to me, was clearly evident. Without affording natural justice, the Ministry here orchestrated a process that encouraged, or at least facilitated, public criticism of the Principal and Vice Principal of a Secondary School by parents, villagers and teachers as a prelude to the unceremonious and unlawful suspension of these school officials on the basis of the criticisms made. This naturally caused, as the trial judge found, reputational loss on the part of the ladies. The unfairness meted out to them was so palpable that even before the matter reached the court, members of the school's Board were constrained to remonstrate with the Ministry at this lack of fairness and to express their dismay at the way the investigation was handled.

[147] The Court of Appeal and the majority leave intact the trial judge's determination that the suspensions were unlawful even as they assail the pillars that support that determination. In particular they contradict the judge's specific and un-appealed finding of unfairness on the part of the Ministry. It seems to me that, given our adversarial system of litigation, when a trial judge makes such an unfavourable finding against a litigant, appellate courts should not ordinarily contradict it if the party to whom it is adverse has elected not to appeal it. In the absence of lodging a cross-appeal the Ministry was precluded from contesting the fact of its unfair treatment of the appellants. There was consequently no scope for reliance, whether by the Court of Appeal or this Court, on the distinction between a judge's perception and evaluation of facts; a matter commented upon in cases such as *Benmax v Austin Motor Company Ltd* [63]. But even if, in this case, the judge's factual findings had properly been placed in issue, since they were all well supported by the evidence before the judge, there was no legal basis for setting aside any of them.

[63] (1955) 1 All E R 326; See also *Booker Stores v Mustapha Ally* (1972) 19 W.I.R. 230; *Industrial Chemicals v Ellis* (1982) 35 WIR 303; and *Grenada Electricity Services Ltd v Isaac Peters*, Grenada Civil Appeal No. 10 of 2002, 28th January 2003

[148] The Court of Appeal and the majority justify the Ministry's conduct on several different bases. Firstly, it is said that section 3 of the Education Act authorised investigations, holding staff accountable and the taking of measures in the public interest. According to the majority, the appellants themselves had on a previous occasion acquiesced in such an investigation. To put it that way is fine, but what section 3 cannot do is to legitimise unfair processes. Nor can section 3 be construed so as to derogate from the unambiguous provisions of section 16 of the Education Act[64] including the elaborate appeals process encompassed by that section. Unless the Education Act is altered, the Chief Education Officer and the Ministry simply cannot instigate, under the cover of section 3, an investigation that produces the suspension of teaching staff. Nor can the Chief Education Officer engage herself directly in suspending any teacher of a government-aided school. It is inconceivable that the Chief Education Officer could exercise such powers and at the same time be available to perform the role of an appellate body under section 16(d) to review the same suspensions. Further, section 3 cannot override fundamental rights contained in the Constitution.

[149] Another excuse advanced on behalf of the Ministry officials was that they were confronted with a crisis or emergency at the school and that, in this context, the rights of the public to the orderly provision of educational facilities should override the individual rights of the appellants. I think, however, that when one delves below the surface it is readily discernible that the supposed emergency was contrived; generated by the conduct and statements of teachers in support of a bold and unlawful demand that the appellants must summarily, without due process, be removed from the school or else the teachers were not prepared to teach. I see no evidence in the case to suggest that the Ministry made any attempt to advise the teachers to abide by the law, to have them demonstrate restraint so that the statute could take its course with the Board being allowed to do precisely what the trial judge ultimately ordered it to do and which, as the judge found, the Board was in the course of doing before the Ministry usurped the authority of the Board. The Ministry's preferred course was to act in haste to capitulate to the unlawful

[64] See [119] above

ultimatum presented by the teachers, even if this meant disregarding the rights of the appellants. I cannot see how the interests of the public are served by this course of action or how, in the circumstances, any such public interests can be allowed to override the fundamental rights of Mrs Lucas and Mrs Carillo.

[150] The courts below were impressed by the circumstance that, in the midst of the "emergency" and before the Investigators had produced their Report, the Honourable Minister of Education was interviewed on national television and in response to a question about the continued tenure of Mrs Lucas he was quoted as stating:

> "I am saying to you that we cannot play politics with education. Let us give the thing the due process, let us allow the investigative team to come in and then ask everybody, including yourselves, to give your views of what you want, what you want to see for the school."

[151] The first part of this statement was mature and reasonable, but statements on their face indicating good faith cannot excuse action that is arbitrary or unfair. Good faith is to be measured not so much by statements made, but by what is done. The *actions* of the Ministry officials, to my mind, ran counter to these statements and those actions undermine completely any conclusions that refer to an absence of arbitrariness and to the existence of good faith. In any event, good faith while perpetrating a wrong does not erase or reduce the damage that flows from the unlawful act. The court must examine the impact of the wrong on and the corresponding remedy that must accordingly be provided to compensate its victims. A court of justice should never say to someone who has been exposed to unlawful suspension, reputational loss and public embarrassment as a direct result of illegal Executive action that she must be denied a compensatory remedy because what was done was supposedly done "in good faith". The Ministry of Education here decided, deliberately, recklessly or negligently, to disregard an Act of the Legislature to the undoubted prejudice of two citizens. In my view, courts fail in their duty if they do not underscore the impropriety of such conduct and afford the victims who have been prejudiced redress that is meaningful.

[152] There is a case from Trinidad and Tobago, *Samaroo v The Principal of Point Fortin Junior Secondary School*[65], where a 13 year old schoolboy was unlawfully suspended from school in breach of natural justice. Jamadar J (as he then was) asked himself whether the suspension amounted to a breach of the boy's right to the protection of the law. On the facts of the case, and based on *Rees v Crane*,[66] the judge did not hesitate to answer the question in the affirmative. *Samaroo* illustrates a commendably generous interpretation of the right in favour of the student. In this case, the Court of Appeal and the majority have opted for a parsimonious interpretation in relation to the Principal. The trial judge, in my opinion, made a sound analysis of the facts and of the Education Act. Unfortunately, she failed to recognise that the ineluctable result of her analysis and factual findings was a determination of constitutional violation. The Court of Appeal and the majority have evaded this inevitable result by substituting the trial judge's un-appealed findings. I disagree with this approach. For the reasons I have given, I am of the view that the appellants' right to the protection of the law was seriously violated.

Issue (iii) Should the appellants have been awarded damages?

[153] A determination that there was no fundamental rights breach naturally would mean that there is no scope for awarding the appellants any constitutional redress. In light of some of the views expressed by the Court of Appeal, I believe it is important, notwithstanding, to say something about allegations of damage, that is to say injury, in cases of this kind. The impression that was given was that there was here no evidence of such damage and therefore no evidence of constitutional violation and/or, even if fundamental rights were infringed, since no injury was established there was no basis on which to award damages or any other form of redress. These are two separate issues.

[154] Not every finding of constitutional breach will yield monetary damages. But a mere declaration that an arm of government has acted in contravention of the Constitution constitutes in itself powerful relief, even in circumstances where the

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[65] *Samaroo v The Principal of Point Fortin Junior Secondary School*, HCA No. S. Cv 536 of 1998, 2nd April 2001

[66] (1994) 43 W.I.R. 444; [1994] 2 A.C. 173

victim of the violation can establish no entitlement to monetary damages.[67] Any notion that a finding of constitutional infringement should be premised on an applicant's ability to establish an entitlement to monetary damages must be rejected. When a litigant approached the court for constitutional redress the court is as much concerned about compensating the wronged citizen as it is with upholding the rule of law. In these judicial review proceedings an award of damages could properly have been made provided that a) damages were claimed on the Fixed date Claim Form; or b) the facts set out in the claimant's affidavit or statement of case justified them; and c) the court was satisfied that, at the time when their application was made, the claimant could have issued a claim for damages for breach of a constitutional right.[68] In my opinion the ladies satisfied these conditions.

[155] The majority suggests that because the appellants are public officials whose offices require a measure of accountability, absent any action they may bring in private law, they should stoically abide having to suffer, at the instance of the State, distress or embarrassment or being "scandalized".[69] The Court of Appeal was of the view that the quashing order gave the appellants all the relief they deserved. I disagree with these opinions. Reputational injury is not to be lightly regarded. Section 14 of the Constitution[70] makes it clear that it is a fundamental right of the citizen that her reputation be protected from unlawful attacks. When assessing the possibility of damages on a constitutional application, courts must be wary of being fixated on financial loss and trivialising, or dismissing altogether, personal injury that is neither physical nor economic. Distress, anxiety, hardship, mental and emotional trauma, these all constitute damage that must be taken into account when the State violates the supreme law to the prejudice of the citizen. For a professional person,

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[67] See for example *Benjamin v Minister of Information* Anguilla High Court No 56 of 1997, January 7, 1998 affirmed by JCPC (2001) 58 W.I.R.171 where the court granted a declaration to the listener of a radio program that her freedom of expression was violated although there was no reason to award damages to the listener

[68] See Part 56.8(2)

[69] See [89] above

[70] Section 14(1) states: A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, *nor to unlawful attacks on his honour and reputation* (my emphasis).

the pain experienced from having her good name unjustly and publicly besmirched is likely to be more hurtful than either physical injury or financial loss. The associated scars may take a much longer time to heal as compared with bodily injury. Lord Kerr referred to this in *James v The Attorney General*[71], a case of discrimination suffered by a police officer, when he stated:

> **[27]** … the very fact of discrimination having occurred can inflict damage on those who have been discriminated against. The sense of having been wronged, the uncertainty over one's status as a consequence of the discriminatory conduct and the distress associated with having to resort to litigation in order to have the discrimination exposed and corrected can all be recognised as damage, perhaps not in the conventional personal injury sense, but damage nonetheless.
>
> **[28]** An injury suffered as a result of discrimination is no less real because it does not possess tangible physical or financial consequences. And the difficulty in assessing the amount of compensation for that type of injury should not deter a court from recognising its compensatable potential.

I agree with these comments which are directly applicable to the appellants. In my view, Mrs Lucas and Mrs Carillo each suffered serious injury for which they should have been awarded damages.

[156] But even an award of a sum of money, irrespective of its size, would have done little to repair the reputational damage. The Constitution's redress section [72] authorises the court to make declarations and give appropriate directions to secure the enforcement of the fundamental rights. The court is invited to be creative and pro-active, unconstrained by the customary frame of common law forms of reparation. In my view, this is a case in which I would have issued, apart from damages, a declaration that the Ministry breached the rights of these ladies and a further order that the Ministry make a public apology to them. A measure like this, even more so than the award of money, might have provided a suitable solatium to the ladies for their tarnished reputations**.**

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[71] (2010) 78 WIR 443

[72] **Section 20**

Was the right to work violated?

[157] Having found that the appellants' right to protection of the law was violated I do not find it necessary to explore further whether their right to work was also violated. I agree with the Court of Appeal that the right to work is not as expansive as counsel for the appellants makes it out to be. Section 15 of the Constitution specifically speaks to denial of the opportunity to gain a living by work one freely chooses or accepts. Mere suspension from work with full pay will not necessarily amount to a denial of the right to work.

Issue (iv) Ending the 7 year impasse – What next?

[158] The answer to this important question does not hinge on the manner in which one determines the constitutional violation issue. Although I am in the minority I address it because the reasoning of the Court of Appeal on this point has implicitly been upheld by the majority and I am in disagreement with that reasoning.

[159] I agree that reinstatement to ESTM was not, and remains not the most practical relief to grant the appellants. As indicated by the majority, it would appear also that Mrs Carillo has since attained the retirement age. Immediately prior to the Court of Appeal's judgment, all the parties regarded the appellants' respective contracts of employment as being still in force. The appellants waited at home on the Board, and on their appeal, for resolution of their dispute. The respondents continued to pay them their full salary. An unambitious, lazy fellow in the shoes of the appellants may have considered this arrangement of receiving full pay for no work a somewhat cozy one. A productive and diligent citizen who took pride in her modest contribution to the development of her country would find it a demeaning and frustrating experience.

[160] The order made by the trial judge[73] was an attempt to resolve finally this unsustainable impasse. I interpreted it as an instruction to the Board along these lines: "Take upon yourselves and suffer the consequences of appropriately dealing with these ladies. Reinstate them or dismiss them, retire them in the interest of the

[73] *See*: [123] above

profession or otherwise lawfully discipline them if you can find cause, but at all costs, proceed urgently to do what must be done in keeping with the law to end this impasse!" The Board was not a party to these proceedings, but nothing prevented them from accepting the judge's intimations. Perhaps uncertain about the eventual outcome of the legal process, the Board did nothing. Neither did the Ministry, which was initially so pro-active and prompt in suspending the appellants.

[161] Looking at it with hindsight, it is true that the appellants could themselves have taken the initiative to repudiate their contracts. At some point, they could have considered themselves as having been constructively dismissed, gotten on with their lives, perhaps taken up such alternative employment as they could secure, even as they prosecuted these proceedings in which they could have included a claim for damages for the constructive dismissal. Alternatively, since they had an appeal underfoot, they could have placed all their faith in the justice system, continued their search for vindication through the courts and waited patiently to see what ultimately would be the result. It should not be held against them that they chose the latter course.

[162] When the Court of Appeal gave its decision, over five years had elapsed since the wrongful suspension throughout which time the appellants remained at home. The manner in which that court attempted to resolve the impasse was to declare that the ladies were unlawfully dismissed *with effect from 28th June, 2008* (i.e. the day after the suspensions expired). The court then reasoned that because any damages accruing to them as a result of that unlawful dismissal would amount to considerably less than the accumulated salary payments received by them since that date, the two amounts should be set off one against the other.

[163] If one methodically pursues the logic in this reasoning the State could now mount a successful claim against the appellants for monies had and received because any damages that would have been payable by the State for unlawful dismissal must amount to a substantially lesser sum than the several years' accumulated monthly salary payments made to the appellants since 28th June, 2008. I feel sure that neither the Court of Appeal nor the majority intended that any such claim would ever be

countenanced. Nor do I expect that the government, which continued to pay those salaries, even after the ruling of the Court of Appeal, would ever file such a claim. Still, it must have been a jolt to both sides that the trial judge in her judgment should have taken for granted the continued existence of the appellants' respective contracts of employment, as everyone else had done, only for the Court of Appeal to declare that in each instance the employment had been terminated, unknown to anyone, even before the case was heard by that judge.

[164] Quite apart from the financial exposure of the appellants alluded to above, retroactive dismissal assumes that whatever choices the appellants may have made about their future, if they had been made aware on or before 28th June 2008 that they would no longer from that date be employees at ESTM, could not have been more enriching to them than the mere monthly receipt of their ESTM salaries between the 28th June 2008 and the date of the judgment of the Court of Appeal. In the absence of convincing evidence to this effect I would reject any such assumption. In this regard *McLaughlin v Governor of the Cayman Islands*[74] is of some interest. In that case a purportedly dismissed Cayman Islands public servant, whose legal challenge to his wrongful dismissal meandered its way up and down the justice system for several years, was held entitled to receive all his emoluments over that time until he was properly dismissed.

[165] I agree that the court was entitled to make some appropriate order to end the intolerable impasse. The judge's order respected the Education Act and allowed the statute to take its proper course. If the alternate approach, of having the court artificially impose termination of the appellants' employment status, was to be implemented then I believe the court should have done so only with prospective effect. And in that event the court would have had to award damages commensurate with a sum to which the appellants would be entitled for wrongful dismissal. But I would have opted for the approach adopted by the trial judge.

[74] [2007] 1 WLR 2839

[166] In all the circumstances, I would have disposed of this appeal by quashing altogether the orders made by the Court of Appeal; upholding the appeal of the appellants; declaring that their right to protection of the law was violated; and awarding them meaningful redress for that violation in addition to their costs in all three courts.

JUDGMENT OF THE HONOURABLE MR JUSTICE WIT

[167] I agree in essence with the judgment of Justice Saunders. Like him, I would have quashed the orders made by the Court of Appeal, upheld the appeal of the appellants, declared that their right to protection of the law was violated and, accordingly, awarded both appellants redress for that violation as well as their costs in all three courts. I only differ on one small point with Justice Saunders. Unlike him, I would not consider ordering a public apology a meaningful or even appropriate form of redress. In fact, I fear that in the circumstances of this case after seven (7) long years of court proceedings any form of redress will be more symbolical than meaningful or effective. As I will explain further on, there was perhaps a time that effective redress could have been possible but that time has long passed. Besides adding my remarks to Justice Saunders' judgment, however, I would wish also to explain my main objections to the majority's judgment.

[168] First, the majority has indicated that although the primary facts of this case are not in dispute, the Court of Appeal was right to disagree with some of the inferences that were drawn by the trial judge, particularly with her findings that the appointment of the investigating team by the Ministry of Education was illegal and *ultra vires.* The trial judge had said that the investigation was more than a fact-finding inquiry in that "the investigating team went further than investigation. The report condemned and criticized management and it made recommendations." The Court of Appeal concluded that there was nothing illegal in appointing the investigating team; that it was in fact the duty of the Ministry to do so; that the terms of reference of the team were "fact-finding in nature and not disciplinary in nature" and that the team did not condemn the appellants but simply reported to the Ministry "a preliminary impression gathered from the meetings at ESTM."

According to the majority, these inferences drawn by the Court of Appeal were sustainable and should not be interfered with.

[169] I have no difficulty accepting that a distinction must be made between primary facts and the inferences arising therefrom. Clearly, appellate courts cannot easily go beyond the primary facts as found by the trial judge. But it is also clear that these courts are not bound in the same way to accept the correctness of the inferences drawn from those facts by the judge.[75] I don't think, however, that an appellate court is in a position to draw different inferences from the primary facts if the factual findings of the trial judge (and the orders and declarations based thereon!) have not been appealed. In the appeal before the court below, no cross-appeal was filed by the respondents and the findings of the trial judge (including the inferences drawn from the primary facts) were therefore *res judicata*. The Court of Appeal was thus in principle constrained to accept her findings as the true facts[76] of this case and, as Justice Saunders has indicated, should only have asked itself whether, *given these facts*, constitutional rights of the appellants were violated.

[170] Secondly, although the majority acknowledges that the investigative team had a duty to act fairly within the terms of its mandate, they are of the view that this duty did not give the appellants a right to be heard. I respectfully disagree. In the circumstances of this case, the appellants should have been confronted with the main complaints against them and they should have been given an opportunity to respond to those complaints. As it was obvious that the controversies surrounding the school had much to do with the relationship between the appellants as administrators and the teachers of the school, an investigation that would not have covered both sides of that relationship could not result in a report that may serve as a proper basis for serious measures.

[171] The concluding remarks and recommendations of the report of the investigating team are a clear result of procedural impropriety. It states:

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[75] See eg the recent case *of Guyana Sugar Corporation v Dhanessar,* [2015]CCJ4 (AJ)

[76] *Res judicata* is shorthand for *res judicata pro veritate accipitur* which means that a judgment [of a competent court if, or to the extent that, it is not appealed] is taken for the truth.

> "In a valiant effort to change things at the school, *the administrators have created new problem*s, which are numerous. *Administrators' apparent lack of human compassion and concern for teachers and students* has eroded the relationship, which appears to have become *irreparable* and calls for *immediate intervention* on the part of the Board of Management to resolve the situation.
>
> The team recommends that:
>
> 1. The Board of management (the managing authority appointed by the Ministry of Education) must meet to review *the findings of this report* and to take appropriate decisions and actions to resolve the matter."

This text clearly indicates that the investigators already had made up their mind and that they were of the preliminary, but obviously one-sided, view that the appellants were to blame for the situation in the school. According to the investigating team, the Board only needed to review those findings in order to take the appropriate decisions and actions. Although the report did not say against whom those decisions and actions should be directed, it did not take much guesswork to find out who the investigators had in mind: the "administrators" were *apparently* on the wrong side of the equation and they would therefore be the ones that had to be dealt with. This is exactly what happened.

[172] In the particular circumstances of this case, the appellants should have been heard as indicated. Without a proper procedural approach, no evenhanded or balanced report could have been produced and no such report was produced. The appellants had a right to be heard, not as a free-standing right but as part and parcel of their fundamental right to be treated fairly by the State and its emanations. This is a correlative, unwritten constitutional right which flows from the inherent duty of the State and its representatives to act fairly, rationally, reasonably and in good faith towards both its citizens and all that dwell on its territory. Both duty and right are part of the normative structure ("the spirit") and internal logic of the Constitution and as such they are embraced by and included in the rule of law.

[173] Thirdly, I disagree with the majority where they state, in paragraph [53], that no other content for the right to protection of the law was raised in argument by the appellants than the denial of their right to be heard so that no other alleged infringement of such right falls to be considered. In fact, in that same paragraph,

the majority adds that the appellants also argued that their right to protection of the law was violated as a result of (a) the (unlawful) appointment of the investigating team, (b) the manner in which the investigation was conducted and the report was prepared and (c) their unlawful suspension.

[174] Let me start by stating that, logically, a violation of the right to be treated fairly, which may in the circumstances include a right to be heard, will not in itself, as is often suggested, constitute an infringement of the right to protection of the law. Such infringement would in my view only occur where unfair treatment by or on behalf of the State cannot properly be remedied under the existing administrative, statutory or common law. Moreover, the submissions of the appellants are correct to the extent that their right to be treated fairly was not only infringed by the denial to confront them with the complaints and to offer them a reasonable opportunity to respond to them. Given the findings and declarations of the trial judge, which were not appealed, this right was also infringed by the way in which the (unjustifiably initiated and therefore illegal) investigation was conducted (indiscreetly, and under relentless coverage by the media). It was further infringed by the report that resulted from the tainted investigation and directly resulted in the illegal suspension of the appellants which was widely broadcasted and even commented upon by the relevant Minister. The appellants were publicly embarrassed and completely railroaded by the way the issue was handled by the respondents and this resulted in damage and injury to their reputation and personal integrity and caused them emotional distress. The vivid and convincing description of the events and their impact on the appellants given by Justice Saunders tells it all and I fully support his reasoning on this point.

[175] I need to return now to the fundamental right of protection of the law. It is submitted that this is the right that has been infringed. As I have stated, it is not enough to establish that some fundamental, written or unwritten, right has been infringed. The right to protection of the law forms part of the rule of law. It guarantees every person in the State whose rights have been infringed or who has been wronged otherwise a right to an effective remedy by due process or due course of the law. As remedies have to be obtained from duly constituted courts or tribunals, the right

must also entail a right of proper access to those courts and tribunals. Clearly, the normative framework and inherent logic of a constitutional democracy require these courts and tribunals to be independent and impartial; these also require them in principle to give anyone before them a fair hearing and to dispense justice within a reasonable time or without undue delay. This important aspect of the rule of law is usually expressed in a separate provision; in Belize it is to be found in section 6(7) of the Constitution.

[176] The right to protection of the law must be invoked by natural or juridical persons (individuals) against the State or its representatives as it is only the State, in one or more of its emanations, that has the legal duty and authority to provide this form of protection. Individuals are entitled to be protected by the State in the enjoyment of their rights against infractions by other individuals or, indeed, by (representatives of) the State itself. Clearly, this protection must entirely be rooted in, and based on, law and principles of justice (due process and due law). In Belize, the right to protection of the law is reflected in and provided under section 3(a) of the Constitution. Given the wording of this provision and that of section 6(1) of the Constitution, everyone in Belize, without any discrimination, is entitled to equal protection of the law, whereas this right is only subject to such limitations as are necessary to ensure that the enjoyment of this right does not prejudice the rights and freedoms of others or the public interest.

[177] The majority has referred to these limitations. They hold that when the relevant Minister exercised his (what the majority sees as a) statutory "power to appoint an investigating committee according to well-defined terms of reference to conduct an investigation and produce a report in order to help to resolve a crisis in an educational establishment under his watch, there was no question of any breach of the Constitution on his part or on the part of those appointed by him to investigate and report. The Minister was forced to act in the public interest." The majority refers with approval to the holding of the Court of Appeal that the appointment of the investigators was "a matter of good administration." Again, and with respect, I disagree. Even if there had been room for overruling the relevant findings and declarations of the trial judge, once again *quod non*, and if we therefore could have

assumed or established that the Minister acted out of necessity and responsibly by circumventing the proper authority, the Board, and by appointing an investigating team in order to solve a crisis, the blatant and unfair execution of that exercise followed by an illegal suspension of the appellants cannot in my view be characterized as "good administration." It cannot be accepted that an illegal exercise of power or the obvious unfair treatment of a citizen by the State could be excused as prompted by the public interest. If the Minister was at all forced to act here in the public interest, this could not have forced him and his civil servants to act unfairly too.

[178] None of this, however, touches directly on the right to protection of the law itself. Once it is established that the State has acted in gross violation of the fundamental right of individuals to be treated fairly by the State, the question arises whether the injury caused by this violation can properly be remedied through administrative relief or whether more is needed, for example, in the form of damages. If the latter is the case, then it is necessary to answer the question whether statutory law or the common law provides a proper basis for awarding these damages. Only when the answer to that question is negative, it must be concluded that an effective remedy is lacking and that hence the right of protection of the law has been violated in which case, provided that the public interest does not militate against awarding such remedy, damages can be awarded under section 20 of the Constitution.

[179] Following this line of argument, I would agree with Justice Saunders that the administrative quashing order and the declaratory relief given by the trial judge or even the continued payment of their salaries were not enough to fully compensate the appellants' suffering as occasioned by the unfair treatment they were given by the State's representatives and that an award of damages would be appropriate to achieve a satisfactory measure of relief. Neither of the two parties have submitted that in cases of this nature a statutory cause of action exists on which damages for loss of reputation or distress or even damages in general can be claimed or awarded. Nor do I think there is one. Furthermore, at the current state of the common law of torts I see no cause of action that could properly be used for this purpose either. It can therefore safely be concluded that the appellants' right to protection of the law

has been infringed. As I see it, an award of damages by way of constitutional redress would in all the circumstances of the case not have been against the public interest. On the contrary, I think it would have served it.

[180] The fact that in this case damages could have been awarded by way of constitutional relief, does not mean that other avenues for reaching a similar result should not be explored. Especially in areas largely covered by the common law, for example the law dealing with wrongful conduct (civil wrongs) or torts, no requirement exists to accept without more the current state of the law if it does not provide a result that properly reflects the values and norms enshrined in the Constitution. Although the Constitution of Belize does not specifically provide, as does for example the South African Constitution[77], that the common law should be developed to bring it up to par with constitutional standards, it is certainly not prohibited to do so. On the contrary, as section 2 of the Constitution indicates, any law, written or unwritten, that is inconsistent with the Constitution shall, to the extent of the inconsistency, be void. I would think that this includes an invitation to legal practitioners to assist the courts in their endeavor and inherent duty to mold and develop the common law in order to make it more just, fair and consistent with constitutional standards. One such standard, for example, is providing an injured person with proper relief for wrongful conduct, which is a standard that directly and necessarily flows from the fundamental right to protection of the law.

[181] There is in my view nothing wrong with such an approach. The common law is not static; it never has been. In the words of the great American judge Learned Hand, the common law "stands as a monument slowly raised, like a coral reef, from the minute accretions of past individuals, of whom each built upon the relics which his predecessors left, and in his turn left a foundation upon which his successors might work."[78] In our Caribbean region, where colourful coral reefs abound, judges do not have to, and should not, depend on the "accretions" that are being added by

[77] Sections 39 and 173
[78] Book Review, 35 Harv. L. Rev. 479 (1922)

judges from a country where the common law was born. Caribbean judges are very capable to do that themselves even more so where it concerns their own societies.[79]

[182] Being judge-made, the common law can also be re-made, adapted and developed by judges. This does in no way violate the separation of powers. Subject to judicial control over the constitutionality of legislation, the legislature remains in control over and supervises the content of all law. Judicial lawmaking, which usually takes place in areas that since time immemorial have been covered by the common law, can always and at any time be superseded by legislation created by Parliament, provided, of course, that legislation is consistent with the Constitution and the normative value structure it embodies[80].

[183] It is not for me at this juncture without the assistance of counsel and judicial pronouncements in the courts below, to pontificate on how exactly, to what extent and in which direction the common law should or can be developed. Suffice it to say that the duty of the State to act fairly is not just procedural. In the case at hand it clearly is largely of a substantive nature. It would seem arguable then that in such a case the duty to act fairly could amount to a duty of care of the State not to cause undue hardship to those (directly or indirectly) employed by it or to those otherwise to a sufficient degree under its control[81]. Where statutory powers have not been exercised with reasonable care, and thus "the relevant function is performed negligently", a cause of action may arise.[82] In order to be able to decide whether or not a duty of care exists, it is necessary to consider whether it is fair, just and reasonable to impose a duty.[83] Also elements of foreseeability and proximity will have to be taken into account. Interestingly, in considering whether to accept a duty of care of the State, English judges have given great weight to the detrimental effects on the public interest of accepting such a duty. According to that case law, such detrimental effects must be balanced against the potential of justice created by

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[79] See also Fraser JA in *Lassalle v AG* (1971) 18 WIR 379 and George J in *Thornhill v AG* (1974) 27 WIR 281 who both wrote eloquently about the dynamic nature and "capacity for growth" of the common law
[80] See IM Rautenbach, Introduction to the Bill of Rights, 1A19.2
[81] See for example by way of comparison in the sphere of International Administrative Law decisions from the ILO Administrative Tribunal, judgment 1526 (11 July 1996) and judgment no. 2768 (4 February 2009)
[82] See *Pyrenees Shire Council v Day* (1998) 192 CLR 330, at 177 and 250.
[83] See eg *Anns v London Borough of Merton*, HL 12 May 1978 [1978] AC 728

accepting the duty.[84] Whether and to what extent compensatory damages should also cover emotional distress, injured feelings and similar forms of *damnum* is another issue to be considered. The fact that they are not currently recoverable under the recognized tort actions cannot be a reason not to explore the issue any further In the famous words of Roscoe Pound: the law must be stable yet it cannot stand still!

[184] My last remarks concern effective or meaningful forms of redress. As said before, ordering a public apology, as suggested by Justice Saunders, does not strike me as meaningful or effective and certainly not seven years after the event. More importantly, I do not consider such an order appropriate. Apologies may make a favourable impression if are they frank and voluntary. Forced apologies, however, are in my view an oxymoron and an undesirable mix of law and morality. Constitutional (vindicatory) damages on top of seven years of salary payments will offer some but probably not too much and merely symbolical relief. The trial judge delivered her judgment two and a half years after the suspension of the appellants. By that time effective measures were not possible anymore. It is clear that the reinstatement of the appellants after such a long time, even if it had been the fairest solution one could think of, would no longer be feasible or realistic.

[185] Effective relief can best be given at an early phase of the proceedings. I note that within three months after the events in April 2008 the trial judge heard and decided, on 2 July 2008, an application for interim orders. The Supreme Court (Civil Proceedings) Rules 2005 provide judges in Belize with many practical tools. If there is a claim for immediate interim relief, the judge must direct that a hearing in open court be fixed [Part 56.4(3)(b)] and she "may grant such interim relief as appears just." [Part 56.4(9)]. Even without an application, the judge could and should have added the Board as a party to the proceedings [Part 19.2(3)]. The judge whose duty it is to "actively manage cases" could then have actively encouraged and assisted the parties to settle the case on terms that are fair to each parties [Part 25.1(e)]. Under the direction of the judge the Board could have been instructed

[84] Lord Browne-Wilkinson in *Barrett v Enfield,* HL 17 June 1999 [2001] 2 AC 550

finally to do its job, the Ministry could have been told to offer realistic and proper alternative employment for the appellants, mediation could have been ordered and, perhaps, even reinstatement of the appellants might still have been a possibility. A practical, pragmatic and common sense judicial approach is often the most effective way of dealing with cases. And the judge who adopts this approach at an early stage of the proceedings often achieves a more just and fair result than the judge who delivers a judgment, however well-reasoned, many years after the fact.

/s/ R. Nelson
The Hon Mr Justice Nelson

/s/ A. Saunders
The Hon Mr Justice Saunders

/s/ J. Wit
The Hon Mr. Justice Wit

/s/ D. Hayton
The Hon. Mr. Justice Hayton

/s/ W. Anderson
The Hon. Mr. Justice Anderson