

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2007-02258

BETWEEN

CHAD ANTOINE

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

AND

Claim No. CV2007-03039

BETWEEN

KELVIN DUNCAN

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE J. JONES

Appearances:

Mr. K. Thompson for the Claimant

**Mr. F. Hosein S. C., Ms. K. Reid and Ms. M. Ramroop instructed by Ms. F. Ramdin for
the Defendant in Claim No. CV2007-02258**

**Mr. F. Hosein S.C. and Ms. A. Humphrey instructed by Ms. S. Sharma for the
Defendants in Claim No. CV2007-03039**

JUDGMENT

1. The Claimants, both dismissed police officers, seek declarations that their constitutional rights have been infringed by the Police Service Commission (“the Commission”) acting pursuant to the Police Service Regulations (“the Regulation”).

Chad Antoine

2. Chad Antoine (“Antoine”) was appointed a police officer on the 4th February 1980. In January 2001 disciplinary charges were brought against him. In accordance with the Regulations a tribunal was appointed to hear the charges. At the hearing Antoine was represented by a member of his Association, the Police Social and Welfare Association. Evidence was led before the tribunal and a report submitted by them to the Commission. By letter dated the 21st February 2003 the Commission informed Antoine that he had been found guilty of the charge. Representations were made on his behalf to the Commission with respect to sentence. Antoine was advised of his dismissal by a letter from the Commission dated the 30th June 2003. His dismissal took effect from the date of the receipt of the letter, the 7th July 2003. On that date as well Antoine’s salary and benefits were stopped. On the 14th July 2003 Antoine appealed to the Public Service Appeal Board (“the Appeal Board”). The Appeal was heard and dismissed on the 23rd March 2004.

Kelvin Duncan

3. Kelvin Duncan (“Duncan”) was appointed a police officer on the 21st December 1970. In June 1997 he was suspended from duty as a result of criminal charges that had been brought against him. By letter dated the 23rd July 1997 he was interdicted and placed on three quarters salary pending the determination of the charges against him. During the years 1998 and 1999 other criminal charges were brought against Duncan. In May 1999 he was convicted and sentenced to 15 years imprisonment for housebreaking and larceny and misbehaviour in public office. On the 30th November 2001 the Court of Appeal confirmed his conviction on the charge of misbehaviour in public office. On the 12th April 2000 Duncan was convicted for the offence of proposing to a person to murder. On the 14th May 2002 the Court of Appeal confirmed his conviction for this offence. He is at present incarcerated at the State Prison.

4. As a result of his first conviction his salary was stopped with effect from the 4th June 1999. In January 2000 disciplinary proceedings were brought against Duncan. At the hearing before the disciplinary tribunal he was represented by an Attorney at Law. On the 13th March 2003 Duncan was found guilty of two of the charges and dismissed from the service with effect from the 5th September 2003. Immediately upon receipt of the letter of dismissal Duncan gave oral notice of appeal. On the 5th September 2003 and 17th April 2005 he gave to the Prison authorities two letters for transmission to the Appeal Board. In the first letter

Duncan stated that he wished to lodge an appeal against the sentence imposed. In the second letter he enquired of the status of his appeal. Neither letter was received by the Board.

5. Both Claimants allege that:

- (i) The failure by the Commission to pay to them their salary and allowances and their pensions and gratuity to which they were entitled is a breach of their right to the enjoyment of property as guaranteed them by the Constitution;
- (ii) The cumulative effect of Regulations 77(2), 84(6), 89 and 101 of the Police Service Regulations “collide” with their right to the protection of the law and to a fair hearing and as a result are unconstitutional, void and of no legal effect;
- (iii) By changing the standard of proof in disciplinary proceedings from the criminal standard to the civil standard the Commission has contravened their right to due process and a fair hearing

In addition Duncan claims that the failure of the State to have his appeal placed before the Board contravened his constitutional rights to the protection of the law.

6. There is no suggestion by either Claimant that the Commission acted in any way contrary to the Police Service Regulations. In addition to answering these submissions the Respondent also submits that to pursue these claims after such a delay amounts to an abuse of the process.

7. Given the submissions made on behalf of the Claimants and the manner presented it may be more useful to approach the challenges by first giving an overview of the relevant provisions of the Constitution and the Regulations with respect to discipline.

The Constitution

8. The Commission is established by **section 122** of the Constitution. By **section 123** there is vested in the Commission the power to appoint persons to hold or act in an office in the Police Service. This power specifically includes the power to:

- (i) Appoint on promotion and transfer;
- (ii) Confirm appointments;
- (iii) Remove and exercise disciplinary control over persons holding or acting in such offices; and
- (iv) Enforce standards of conduct on such officers.

9. **Section 129** of the Constitution permits the Commission with the consent of the Prime Minister, by regulation or otherwise, to regulate its own procedure. By section 129(4) no penalty may be imposed on any public officer except as a result of disciplinary proceedings. By section 129(5), notwithstanding subsection (4), where an officer has been convicted of a criminal charge in any Court and the time for appeal has elapsed or the appeal process has been completed or an order made under section 71 of the Summary Courts Act the Commission may consider the relevant proceedings on such charge “and if it is of the

opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the conduct which led to his conviction on the criminal charge or to the making of the order, the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary charges.”

The Police Service Regulations

10. The Regulations are made pursuant to section 129 of the Constitution. Chapter VIII of the Regulations set out the procedure adopted by the Commission with respect to discipline. This disciplinary regime established by the Regulations includes a four-stage disciplinary process.

11. The first stage involves the appointment of an investigating officer by the Commissioner of Police. The investigating officer is mandated to collect statements from all persons with direct knowledge of the allegation including the officer charged and submit those statements together with his report to the Commission. The Commission then determines whether disciplinary charges are to be laid against the officer: **Regulations 84(1) to (6)**.

12. The second stage arises only if the Commission determines that disciplinary charges are to be laid against the officer. It requires the Commission to inform the officer of the charges, give the officer a copy of his written explanation to the investigating officer and

require the officer to state in writing whether he admits or denies the charges. If the officer admits the charge the Commission then determines the penalty otherwise the proceedings go on to the hearing stage: **Regulations 84(6) and (7) and 87.**

13. The next stage involves the appointment of a disciplinary tribunal. **Regulation 89** provides for the Commission to appoint a disciplinary tribunal to hear the evidence and find the facts. This tribunal shall comprise either one officer or person or an uneven number of officers or persons: **Regulations 90 to 94.** By **Regulation 95(1)** the standard of proof is to be a balance of probabilities. Upon the conclusion of the hearing the disciplinary tribunal is required to send to the Commission a report containing its findings of fact and its opinion as to the meaning and nature of the facts found together with a record of the proceedings.

14. The final stage occurs when the Commission considers the report of the disciplinary tribunal and determines whether the officer ought to be exonerated or a penalty imposed. Regulation 101 mandates the Commission to inform the officer in writing of its findings, the penalty imposed and his right to appeal to the Board: **Regulation 101(2)** and the time such penalties shall take effect: **Regulation 101(3) and (4).** **Regulation 104** deals with the penalties that the Commission may impose with respect to disciplinary proceedings and the time from which these penalties are to take effect.

15. By **Regulation 101(5)** the failure by the Commission to inform the officer of his right to make application for appeal and of the time limit in that regard shall not invalidate the decision of the Commission.

16. In addition **Regulation 108** states:

“(1) A police officer convicted of a criminal charge and sentenced to imprisonment without the option of a fine or convicted of a criminal charge involving-

- (a) dishonesty;
- (b) fraud; or
- (c) moral turpitude,

shall not receive any pay or allowance after the date of conviction pending consideration of his case by the Commission.

(2) The Commission may direct that a police officer convicted of a charge described in subregulation (1) shall cease to perform the duties of his office forthwith.

(3) Notwithstanding that a police officer convicted of a charge described in subregulation(1) has appealed against a charge or conviction, such police officer shall not receive any pay or allowance after such date.”

Non payment of salaries

17. In my view the submissions of both Claimants with respect to the non- payment of their salaries and allowances are misconceived. Antoine submits that Regulation 101(4) constitutes a term of employment which the Commission is not empowered by law to make and therefore the cessation of his salary pursuant to that regulation contravened his

fundamental rights to the enjoyment of property and not to deprived of same except by due process of law. Duncan's submission is in similar terms with respect to Regulation 108. Nothing could be further from the truth.

18. **Regulation 101(1)** and **101(1A)** deals with the penalties that may be imposed on an officer by the Commission. **Regulations 101(3)** and **(4)** deal with the time from which these penalties are to take effect. **Regulation 101(3)** states:

“Where the police officer-

- (a) makes an application for an appeal in accordance with the Public Service Appeal Board regulations, the penalty shall not take effect pending the determination of the matter by the Public Service Appeal Board; or
- (b) does not make an application for an appeal to the Public Service Appeal Board, the penalty shall take effect at the expiration of the same time.”

19. By **Regulation 101(4)**: “Where Commission under subregulation (1) informs the police officer that the penalty imposed on him is dismissal, the police officer, notwithstanding that he makes an application for an appeal to the Public Service Appeal Board in accordance with the Public Service Appeal Board Regulations shall not receive any pay or allowances from the date specified by the Commission.”

20. **Regulation 101(3) and (4)** therefore merely specify the time from which the penalties shall take effect. In my opinion this cannot in any way be considered a term and condition of service. In my view that is a legitimate exercise of the power to exercise disciplinary control vested in the Commission by the Constitution

21. Similarly Regulation 108 also deals with the penalties to be imposed on an officer but in this case not pursuant to the disciplinary process. In my opinion Regulation 108 must be read in conjunction with sections 121 and 129(5) of the Constitution. By **section 121** the Commission is given the power to enforce standards of conduct on police officers as well as exercise disciplinary control. By **section 129(5)** the Commission may impose penalties on an officer outside of disciplinary proceedings in the case of a criminal conviction. In my opinion the Regulation 108 is in discharge of the Commission's duty as vested in it by the Constitution to exercise disciplinary control and enforce standards of conduct on officers holding office in the Police Service. Further such power is exercisable even outside of the institution of disciplinary proceedings in the limited situation described by section 129(5) of the Constitution.

22. In my view therefore these two regulations are neither an imposition of a term and condition of service nor ultra vires the power of the Commission. In my opinion these regulations are a legitimate exercise of the power to exercise disciplinary control and enforce standards of conduct vested in the Commission by the Constitution.

The challenge to the Disciplinary Proceedings

23. The Claimants submit that:

- (i) Regulations 77(2), 84(5), 89 and 101 breach the rules of natural justice in that they require the Commission to be a judge in its own cause;
- (ii) The amendment of Regulation 95 which changed the standard of proof from the criminal standard to the civil standard violated his right to due process and the right to a fair hearing;

(i) **Breach of the rules of natural justice**

24. The rules of natural justice are rules geared to maintaining fairness. They require that those persons whose interests are or may be affected by an act or decision be given notice and an opportunity to be heard by a disinterested and impartial tribunal. The affected party must be given an opportunity to put his case and the tribunal's decision must not be tainted by interest or bias. The thrust of the Claimant's submission must therefore be that the collective exercise by the Commission of the power to charge, to appoint the disciplinary tribunal, to decide on the guilt of the officer and impose a penalty on him is in breach of the rules of natural justice in that it is not unbiased and therefore constitutes a breach of due process and the right to a fair trial guaranteed by the Constitution.

25. I do not agree with this submission. Under the Regulations upon a report or allegation of an offence made to it the Commission is required to determine:

- (i) Whether disciplinary charges are to be brought against the officer;
- (ii) The nature of those charges;
- (iii) Whether the officer should be exonerated of the charge and if not the nature of the penalty to be imposed.

26. In this regard the Commission acts upon the recommendations of either the investigating officer or the disciplinary tribunal. The investigating officer collates the relevant statements including that of the officer investigated and based on the contents of those statements makes the necessary recommendation to the Commission. At that stage all the Commission is required to do is to consider the report, satisfy itself that based on the information placed before the investigating officer the report is of merit and based on the report determine whether charges ought to be brought against the officer. Similarly in order to make its decision identified at (iii) the Commission acts on the basis of the recommendations of the disciplinary tribunal whose duty it is to make findings of fact and present to the Commission its opinion as to the meaning and nature of the facts found.

27. Under the disciplinary scheme as established by the Regulations at no time is the Commission required to make any findings of fact with respect to the charges. In my view, under the Regulations the Commission is neither the complainant, the prosecutor nor the

judge of the facts. The Commission's actions in this regard are administrative and non judicial.

(ii) The change in the burden of proof

28. The challenge mounted to Regulation 95 by the Claimants according to the claims filed is that the change in the burden of proof is contrary to sections 4(b) and (d) of the Constitution. In their submissions however the challenge is to sections 4(b) and 5(2)(2) of the Constitution. I assume that the reference to section 5(2)(2) is in fact a reference to section 5(2)(e) since there is no section 5(2)(2) of the Constitution and section 5(2)(e) is the section that best approximates the submissions made.

29. **Section 5** of the Constitution is in effect a direction to Parliament. The offending regulation was however not passed by Parliament. By **section 129** of the Constitution the Commission is charged with the regulation of its own procedure subject only to the consent of the Prime Minister. The amendment effecting the change in the standard of proof was brought into law by **Legal Notice 214 of 1990** and not by an act of Parliament. In my opinion given the manner in which the change in the standard of proof was effected it is clear that a breach of section 5(2)(e) does not arise.

30. It would seem to me that by virtue of the submission made the Claimants have abandoned the claim with respect to a breach of section 4(d). Understandably so since section 4(d) deals with equality of treatment by a public authority.

31. As best as I can decipher the submissions in this regard the Claimants submit that the regulation specifying the criminal burden of proof is existing law and any change to that standard of proof contravenes section 4(b) of the Constitution. By **section 4(b)** the right protected is “the right of the individual to equality before the law and the right to the protection of the law”. With respect to the right of the individual to equality before the law it has long been established that this right prevents discrimination by the legal process between persons in the same or similar circumstances: **Smith and Another v L.J. Williams Ltd (1980) 32 WIR 395**. In my opinion the facts raised by the Claimants do not reveal any discrimination in treatment as compared to similar circumstanced persons. Further I accept the submission of the Respondent to the effect that the establishment of the standard of proof is a procedural requirement and not a substantive right. In those circumstances any comparison between disciplinary hearings before the amendment and after the amendment would be of no relevance.

32. In similar vein in my view there is no basis for the claim that the Claimant’s right to the protection of the law has been breached. In this regard it is sufficient to quote from the judgment of Lord Diplock in **The Attorney-General v Mcleod (1984) 32 WIR 450** at page 459 letters c and d:

“.....so long as the judicial system of Trinidad and Tobago affords a procedure by which any person interested in establishing the invalidity of that purported law can obtain from the courts of justice, in which the plenitude of the judicial power of the State is vested, a declaration of its invalidity that will be binding

upon the Parliament itself and upon all persons attempting to act under or enforce the purported law. Access to a court of justice for that purpose is itself “the protection of the law” to which individuals are entitled under section 4(b).”

In my opinion therefore the Claimant’s submissions in this regard must also fail.

The failure of the Board to hear the Appeal

33. **Section 130** of the Constitution establishes the Appeal Board. **Section 130(1)** states that there shall be a Public Service Appeal Board to which appeals from such decisions against public officers as are specified in section 132 shall lie. **Section 132** provides for appeals to the Board from any decision of the Commission as a result of disciplinary proceedings brought against an officer. By **section 132(5)** the Appeal Board may by regulations make provision for its own procedure and the procedure to be followed in appeals.

34. The Public Service Appeal Board Regulations (“the Appeal Board Regulations”) are made pursuant to section 132(5) of the Constitution. **Regulation 5** deals with the manner in which an appeal is to be instituted and provides:

- “ (1) Every appeal brought to the Appeal Board shall be by way of rehearing and shall be brought by notice in the form set out as Form 1 in the First Schedule.
- (2) A notice under sub-regulation (1) shall-

- (a) set forth the grounds of appeal;
 - (b) state whether the appeal is against the whole or part only of the decision of the appropriate Service Commission and where it is against a part only, specify which part;
 - (c) state the nature of the relief sought; and
 - (d) be signed by the appellant or his legal representative.
- (3) Where the grounds of appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.
- (4) The grounds of appeal upon which the appellant intends to rely at the hearing of the appeal shall be set out concisely and under distinct heads, without any argument or narrative and shall be numbered consecutively.
- (5) No ground which is vague or general in terms or which discloses no reasonable grounds of appeal shall be permitted, save the general ground that the judgment is against the weight of the evidence, and any ground of appeal or any part thereof which is not permitted under this regulation may be struck out by the Appeal Board of his own motion or on application by the respondent.
- (6) No appellant may without leave of the Appeal Board, urge or be heard in support of any ground of objection not mentioned in the notice of appeal, but the Appeal Board may in its discretion and upon such

conditions as it considers just, allow an appellant to amend the grounds of appeal specified in the notice.

(7) Notwithstanding the provisions of this regulation, the Appeal Board in deciding the appeal-

(a) shall not be confined to the grounds set forth by the appellant;

(b) shall not rest its decision on any ground not set forth by the appellant unless the respondent has sufficient opportunity of contesting the matter on that ground.”

35. It is clear therefore that by the Appeal Board Regulations a notice of appeal must be in writing. Oral notice is not enough. The notice of appeal must not only state the intention to appeal but it must clearly concisely and specifically state the grounds of appeal relied on. Failure to state such grounds with sufficient particularity or to state grounds that are unreasonable renders that ground liable to be struck out by the Appeal Board. It follows that where a notice of appeal contains only vague, general or unreasonable grounds that notice of appeal itself is liable to be struck out. Similarly it would seem to me that if a notice of appeal contained no grounds of appeal it would be liable to suffer the same fate whether or not it was in the prescribed form.

36. The real issue for this court’s determination is not whether the Appeal Board received the letter of the 5th September 2003 but rather whether that letter constituted a valid notice of appeal. It would seem to me that even if the appeal was not in the form as prescribed by the

regulations but contained the information specified in Regulation 5 Duncan would be on more solid ground. The problem is that no grounds of appeal are given in the document. The document merely states Duncan's intention to appeal.

37. It seems to me therefore that the letter of the 5th September 2003 cannot be considered a valid notice of appeal and in the circumstances Duncan's submission on this ground must also fail. In my view even if the letter of the 5th September 2003 had been received by it the Appeal Board would have been at liberty to disregard same as not constituting a valid notice of appeal under the regulations.

38. In this regard it is interesting to note that Regulation 101(5) of the Police Service Regulations provide that a failure to inform an officer of his right to make an application for an appeal and of the specified time for making such an application shall not invalidate the decision of the Commission.

39. In any event it seems to me that no injustice is done to Duncan since, by virtue of his conviction on criminal charges, pursuant to section 129(5) it was open to the Commission to dismiss him without the institution of disciplinary proceedings. In those circumstances Duncan would not have been entitled to any recourse as the appeal process only arises as a result of disciplinary proceedings brought against the officer.

Failure to pay the Claimants' pensions and gratuities

40. The Claimants submit that even if the Court is of the view that their dismissals were valid they are entitled to a monthly pension not exceeding 1/960th of a month's pay for each completed month of service. In this regard they rely on rule 4(3) of the Pension and Gratuity Rules made under section 64 of the Police Service Act Chap.15:01. They allege that a failure to pay such pension is a breach of their right to the enjoyment of property.

41. The granting of pensions and gratuities to public officers, including police officers, is regulated by the Pensions Act Chap. 23:52. **Section 9** of the Act states:

“(1) No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance under this Act, nor shall anything herein or in the regulations contained limit the right of the State to dismiss any officer without compensation.

(2) Where it has been established to the satisfaction of the President that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld.”

Further by **section 26** the President may direct that the pension of an officer who has been sentenced to a term of imprisonment by any competent court cease. Further section 63 of the Police Service Act provides that the “pensions, gratuities and other allowances to be granted in respect of the services of police officers in the First and Second Division shall be determined in accordance with the Rules set out in the Sixth Schedule.”

42. **Rule 3(2)** states:

“In the event of any police officer leaving the Police Service without being eligible for a pension or gratuity under the provisions of this Act, whether by reason of dismissal or otherwise, he shall be entitled to the return in full of all deductions made from his pay under subrule (1)

43. **Rule 4(3)** states:

“If a police officer to whom this part applies or who has served in the police service for 10 years or more does not at the end of any period of re-enlistment obtain permission under the regulations to re-enlist as provided or shall be dismissed or shall have his services dispensed with in accordance with the Regulations, such police officer if not otherwise eligible for pension, may be granted a monthly pension not exceeding 1/960ths of a month’s pay for each completed month of service.”

44. **Rule 4(11)** states:

“Nothing herein contained shall be construed to entitle any police officer absolutely to a pension or to prevent his being dismissed without a pension, subject to subrules (12) and (13), if any such police officer to whom a pension is granted under this act is sentenced to a term of imprisonment by any competent Court in Trinidad and Tobago for any crime or offence or quits Trinidad and Tobago after having reason to know that a charge of

having committed any indictable or summary offence has been laid against him, and before such charge has been heard or determined, the President may direct that such pension shall forthwith cease.”

Rules 4(12) and (13) do not apply to the instant cases.

45. It is clear therefore that the rules contemplate a situation where an officer, by virtue of dismissal, may not be entitled to any pension. It would seem to me that the use of the word “may” in rule 4(3) suggests that the payment of the monthly pension under this rule is discretionary rather than mandatory. In any event, by virtue of the Pensions Act, there is no absolute right to a pension or gratuity. The Claimants have both been dismissed as a result of misconduct. In addition Duncan has been sentenced to a term of imprisonment by a competent court. Section 9 and 26 of the Pensions Act would then apply. In my view therefore the Claimants claim to be entitled to the payment of a pension pursuant to rule 4(3) of the Pensions and Gratuities Rules also fails.

46. At the end of the day therefore I am of the opinion that there is no merit in any of the submissions made by the Claimants in these actions. It remains for me to deal with the Respondent’s submissions as to the abuse of process.

Are the proceedings an abuse of process?

47. “The right to apply to the High Court....for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of

those rights and freedoms; but its value will be diminished if it allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.”

Lord Diplock in Harrikissoon v the Attorney- General [1980] AC 265 at 268 letter C.

48. In **Durity v The Attorney General of Trinidad and Tobago Privy Council Appeal No. 52 of 2000** at paragraph 35 the Privy Council while referring the question of delay and abuse of process in the institution of constitutional proceedings back to the Court of Appeal for its determination made the following general observations:

“When a court is exercising its jurisdiction under section 14 of the Constitution and has to consider whether there has been a delay such as would render the proceedings an abuse or would disentitle the claimant to relief, it would usually be important to consider whether the impugned decision or conduct was susceptible to adequate redress by timely application to the court under its ordinary, non-constitutional jurisdiction. If it was, and if such an application was not made and would now be out of time, then, failing a cogent explanation the court may readily conclude that the claimant’s constitutional motion is a misuse of the court’s constitutional jurisdiction. This principle is well established. On this it is sufficient to refer to the cautionary words of Lord Diplock in *Harrikissoon v Attorney-General of Trinidad and Tobago* [1980] AC 265, 268. An application made under section 14 solely for the purpose of

avoiding the need to apply in the normal way for the appropriate judicial remedy for unlawful administrative action is an abuse of process.”

49. In the instant cases the Claimants seek to challenge decisions of the Commission. With respect to Antoine the challenge is to disciplinary proceedings instituted in January 2001 and completed on the 23rd February 2003 and the decision of the Commission to dismiss him pursuant to those disciplinary proceedings and to stop the payment of his salary and allowances. The latter two decisions were communicated to Antoine on the 30th June 2003 and the 7th July 2003. Thereafter the decision to dismiss him was confirmed by the Appeal Board on the 23rd March 2004. Antoine’s claim for relief under the Constitution was filed on the 29th June 2007.

50. With respect to Duncan he complains of the decision to stop his salary communicated to him in June 1999, the disciplinary proceedings commenced against him in January 2000, the finding of guilt and the decision to dismiss him, communicated to him on the 13th March 2003 and the 5th September 2003 respectively. He also complains of the failure of the Appeal Board to hear his appeal which he says he instituted on the 5th September 2003. Duncan’s claim for relief under the Constitution was filed on the 20th August 2007.

51. That the disciplinary proceedings and the decisions challenged were susceptible to adequate redress by the Court under its non-constitutional jurisdiction cannot be denied. Neither can it be denied that it is now too late to make such applications. In Antoine’s case

no explanation is given for the failure to avail himself of the remedies available to him under the Judicial Review Act. With respect to Duncan, except perhaps with respect to his appeal, the position is the same. It seems to me that with respect to these claims this is clearly an attempt by the Claimants to misuse section 14 of the Constitution in circumstances where relief under the Judicial Review Act is no longer an option. In these circumstances I am of the view that, save in respect perhaps to those questions that flow from the failure of the Appeal Board to hear Duncan's appeal, to seek to pursue these questions after such a delay is an abuse of the process.

52. In all the circumstances of the case therefore both Claims are dismissed. The Claimants will pay the Defendant's costs.

Dated this 4th day of December, 2008.

.....
Judith A. D. Jones
Judge