

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-04291

BETWEEN

CERON RICHARDS

Claimant

AND

THE PUBLIC SERVICE COMMISSION

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. R. L. Maharaj SC and Mr. A. Ramroop instructed by Mr. K. Walesby for the Claimant

Mr. R. Martineau SC and Ms. R. Hinds instructed by Ms. L. Thomas for the First Defendant

Ms. D. Boxhill and Ms. L. Khan for the Second Defendant

JUDGMENT

1. The claimant (Richards), holds the rank of Prison Officer II in the Trinidad and Tobago Prison Service having enlisted in the service since on the 21st December 1994. He is also the President of the Prison Officers Association of Trinidad and Tobago (POA) and has held the posts of Assistant General Secretary and Public Relations Officer of the said association. The association is the body lawfully recognized as the representative for all prison officers. The first defendant (PSC), is the commission established by section 120(7) of the Constitution of the Republic of Trinidad and Tobago and is vested with jurisdiction over all public officers inclusive of prison officers in relation to matters of appointment, promotion and discipline. The claim is also brought against the Attorney General for damages for breach of the claimant's rights under sections 4(b) and 4(d) of the Constitution Chap 1:01.

The challenge

2. The challenge is made to the decision of the PSC to suspend Richards from duty until further notice pending the outcome of allegations of misconduct. The challenge is made on several grounds which are set out in detail later in this judgment. The challenges under sections 4(b) and (d) of the Constitution are brought against the Second Defendant. The challenge under 4(d) has since been withdrawn.

The facts and evidence

3. Richards was issued with a service firearm, namely a H&K Compact 9 mm pistol (the service firearm), together with two magazines and twenty-six rounds of 9 mm ammunition by the Commissioner of Prisons (COP) in the month of November 2013. In 2014, he was granted a firearm users licence, number 405/2014 by the Commissioner of Police and is therefore also the lawful user of another firearm namely one M&P 9mm pistol and twenty-five rounds of ammunition. At about 2:30 p.m., on the 10th March 2016, Richards secured his service firearm, magazines and holster in a Honeywell Molded Fire/Water Chest safe

at his home along with other valuables, stored it in a bedroom cupboard, secured his home and left to attend a meeting on behalf of the association, taking with him the key to the safe. The safe was approximately 6.5 inches high, 16 inches wide and 12.6 inches in depth, a relatively small safe. It was fitted with a locking key mechanism and dual compression latches.

4. Due to rescheduling issues, the meeting which he originally intended to attend was eventually cancelled. As a consequence he performed other association related duties with the aid of a driver employed in the prison service and thereafter spent the night at a friend's home. Upon his return home the next day, he discovered that his home had been broken into and the safe and contents were missing. No other item was missing from the home. He made a report to the Barataria Police Station and the police officers visited his home and conducted investigations during which they recovered fingerprints.
5. By letter of the 28th June 2016, the COP wrote to Richards and informed him that pursuant to Regulation 90 of the Public Service Commission Regulations (the regulations) Prison Supervisor Allan Nanan was appointed as an Investigating Officer (IO) to enquire into the following allegations of misconduct against Richards;

a. "That he, Prisons Officer II #2295 Ceron Richards was Discreditable in his conduct when on March 10, 2016 he left unattended at his residence for an approximate twenty four (24) hour period, his Prison issued one (1) H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster, which was issued to him for his protection, his failure to adequately secure these items culminated in the said items being reported stolen, by him sometime between March 10, 2016 and March 11, 2016."

Contrary to Regulation 20 (2) (a) (i) of the Prison Service (Code of Conduct) Regulations 1990.

b. *“That he, Prisons Officer II #2295 Ceron Richards having been issued one (1) H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster for his protection, have failed to account for the said items, when he reported that they were stolen from his residence sometime between March 10, 2016 and March 11, 2016.”*

Contrary to Regulation 20 (2) (f) of the Prison Service (Code of Conduct) Regulations 1990.

6. By letter of the 11th July 2016, the IO wrote to Richards informing him of the very allegations and of the opportunity to submit a statement in relation to the allegations to the IO within seven days after receipt of the letter.

7. Richards responded by letter of the 19th July 2016 as follows;

“Without prejudice to my right to make further representations with respect to any allegations of breach of particular regulations, I wish to submit the following for the purpose of your investigation:-

- 1. My prison issued one (1)H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster were adequately secured in a safe at my locked residence.*
- 2. On 11 March 2016 I discovered that my residence was broken into by persons unknown to me and that the aforementioned items were stolen.*
- 3. I immediately reported that the said items were stolen to the Trinidad and Tobago Police Service and to the Trinidad and Tobago Prison Service.*
- 4. I have no way of knowing who stole these items or their present whereabouts.*

I have acted in accordance with the Firearms Act Ch. 15:01”

8. No acknowledgement of receipt of Richard's letter of the 19th July to the IO or a response thereto was received by Richards up to the date of the filing of the Fixed Date Claim in these proceedings.
9. Also on the 19th July 2016, on instructions from Richards, Attorney-at-law Mr. Kern Saney wrote to the PSC seeking disclosure of the specific regulation which the PSC alleged that Richards had breached so that he would be in a position to fully respond. Attached to the letter was a statement from Richards which according to Mr. Saney established that Richards had properly secured his service firearm in a locked safe at his home, that he was the victim of theft and was not in any way negligent. The statement has not been annexed to the copy of the letter attached to the affidavit of Richards in support of his claim so the court has not had sight of the statement allegedly attached. Mr. Saney took the opportunity to set out that in light of the statement provided, which he asked be taken into account by the PSC, it would be unreasonable, irrational and an improper exercise of a discretion should the PSC proceed to prefer charges against Richards. To the date of filing there has been no response by the PSC to this letter.
10. By letter dated the 30th August 2016, which was collected by him at the Prison Administration Office on the 5th September 2016 the PSC directed that Richards cease reporting for duty in accordance with regulation 88 of the regulations with effect from date of receipt of the letter pending "the outcome of the allegations of misconduct which were made" against him. A statement of allegations which contained two allegations in the exact terms as those set out in the letter by the COP of the 28th June 2016 (supra) was attached to the said letter.
11. As a consequence of the events, Richards was required to return his uniform and accoutrements, pocket diary and Prison Service Identification to the prison service and is to report to the office of the Senior Superintendent of Prisons every Tuesday. He is also not permitted to leave the country without permission.

12. **Ms. Marcia Pile O' Brady** (deponent on behalf of the PSC) is the Acting Deputy Director of Personnel Administration, Service Commissions Department (DDPA). It is her evidence on affidavit that the PSC became aware of the allegation of misconduct against Richards when a letter dated the 2nd August 2016 under the hand of the IO was received by the PSC. In that letter, the IO informed the PSC that he had been appointed investigator into the allegations against Richards and he requested an extension of time within which to produce his report.
13. The PSC met on the 23rd August 2016, considered the allegations and decided to direct Richards to cease reporting for duty in accordance with regulation 88. The evidence is that the PSC formed the view that the repute of the Prison Service and the public interest required it to so direct. It is to be noted that the DDPA did not set out in her affidavit whether the PSC considered the matters raised by Mr. Saney in his letter of the 19th July 2016, supra, when considering the allegations and making a determination that a direction to cease reporting for duty would be given to Richards at the meeting on the 23rd August. The DDPA does however testify that she is aware that the said letter under the hand of Mr. Saney was received but directed to the wrong section of the Discipline Unit, namely the one responsible for processing High Court matters. The PSC has never responded to that letter. The witness has given no information as to when the discovery of the letter was made. A reasonable inference can therefore be drawn that at the time of the consideration of the allegations on the 23rd August, the PSC was unaware of the existence of the said letter and therefore the contents thereof would not have formed part of their deliberations.
14. The evidence of the IO Mr. Nanan is that he submitted his report to the PSC on the 9th September 2016. It therefore means that at the time the PSC considered the allegations on the 23rd August 2016, it was not seised of the Nanan report.
15. Subsequently, on the 8th November 2016, the PSC received a pre-action protocol letter from Mr. A. Ramroop Attorney-at-law acting on behalf of Richards, in which Mr. Ramroop, in very detailed manner, set out in substance the details of the present claim and called on the PSC to withdraw the suspension, offer monetary compensation to Richards

and pay his costs to date. By follow up letter of the 28th November 2016, Mr. Ramroop wrote once again to the PSC demanding that the suspension be lifted by the 29th November 2016. The Director of Personnel Administration (DPA) responded by letter of the 2nd December 2016 indicating that it was in receipt of the letters above and “you will be duly informed once the matter has finalized”. The court must say at this stage that it does not understand the response by the DPA in relation to the request the response being ambiguous in terms.

16. **Rudy Mahase** (deponent on behalf of the PSC) is a Prisons Officer II attached to the Armoury department, Emergency Response Unit Golden Grove Prison. He has been a prison officer for twenty two years, ten of those having been spent in the Armour Shop as a junior officer, Armourer Assistant and he has performed the duties of Armourer for the past three years. As far as he is aware, there were no written guidelines from the COP for the overall carrying or securing of firearms save and except that at the time of issuance of the firearm, the Assistant Commissioner of Prisons issuing the firearm would give the officer a generalized talk on how to carry and secure the firearm. Once issued, the officer then reports to the Armoury where the Armourer or the assistant would speak to the officer about proper handling and safety procedures. Thereafter, a monthly inspection of the firearm is held. Richards attended all of his inspections except those for the months of January, February and March 2016. Mahase spoke to Richards on several occasions during this period to request that he present himself for firearm inspection but there was no compliance. As a consequence, Mahase wrote to the COP on the 3rd February, 2nd March and 4th April informing him of the non-compliance by Richards. Subsequently in April, Mahase met Richards who was on the way to give a statement to the ACP and Richards informed him that the firearm was stolen.

17. In his reply to the evidence of Mahase, Richards deposed that Mahase was not present when the issuing officer gave a general lecture. The court accepts this evidence as Mahase did not at any point say that he was in fact present. In any event, Richards admits that such a lecture was given to him. Richards also countered that the issuing officer Mr. Ramroop had in fact spoken of several matters in relation to care and safety of the firearm including

the need to secure the firearm in a safe. These matters are all set out in the affidavit in reply of Richards and the court does not think the matters are of sufficient relevance to the issues in this claim so that they will not be set out herein. Suffice it to say that Richards denies not having reported for firearm inspections as stated by Mahase and avers that his firearm was in fact inspected by Mahase in the months of February and March 2016. In the court's view, in the case before the court, nothing turns on the issue of who is speaking the truth in relation to these matters as they are not relevant to the issues to be decided. They have been mentioned in this decision for the sole purpose of providing context and background to the claim.

18. The Investigating Officer **Mr. Allan Nanan** also gave evidence on behalf of the PSC. Nanan testified as to his appointment by letter of the 11th July 2016 and of the fact that he was to investigate and report directly to the DPA. Having contacted Richards, he met with him on the 13th July 2016 at the Golden Grove Prison, showed him a copy of the letter of appointment, informed him of the allegations and that he was entitled to submit a statement if he so desired within seven days. Nanan admitted that he collected the statement from Richards as set out in Richards' affidavit. The letter of allegations shown to Richards and signed by him according to Nanan was that set out in his affidavit and attached as AN 2. It is the same letter attached to Richards' affidavit as CR5 and is dated the 11th July 2016. Nanan continued his investigation, visited the Barataria Police Station and the Armourer of the Prison Service. He obtained a summary of the report made to the police and inspected registers and reports of the armoury. He submitted his report to the PSC by hand on the 9th September 2016. Nanan recommended that charges be laid in relation to both allegations.

19. The court notes at this stage that the allegations contained in the letter of the 11th July 2016 and shown to Richards treat with the issue of failure to secure the firearm and to account for same when he reported the firearm stolen. It does not treat with the issue of failing to present for inspection in the months of January or February or even March. So that when the statement provided to Nanan by Richards in compliance with the request by Nanan is considered it is patently obvious that Richards seeks to answer only the allegations made against him in the letter so shown to him and nothing more.

20. However, Richards deposed in his affidavit in reply that he had in fact also received another letter dated the 28th June 2016 from the COP in which the COP set out that Nanan had been appointed IO to enquire into a different set of allegations (the second set of allegations). In its entirety the letter reads as follows;

In accordance with Regulation 85(1) and (2) of the Public Service Commission (Amendment) Regulations, 1990:-

I have appointed Prisons Supervisor Allan Nanan as Investigating Officer to enquire into the following Allegations of Misconduct made against you:

ALLEGATIONS

That you, Prisons Officer II #2295 Ceron Richards sometime between March 10, 2016 and March 11, 2016 by carelessness, caused the loss of one (1) H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster, being the property of the Trinidad and Tobago Prison Service that was entrusted to your care.

Contrary to Regulation 20 (2) (p) (i) of the Prison Service (Code of Conduct) Regulations 1990.

That you, Prisons Officer II #2295 Ceron Richards was Disobedient to Orders on January 18, 20, 22, 26 and 28 2016 when your failed to present your Prison issued H&K 9mm Semi-Automatic Pistol, Serial #27-054485, and two (2) H&K Magazines with twenty six (26) rounds of Ammunition to the Prison Armourer. Prisons Officers II #2399 Rudy Mahase for Inspection at the Prisons Training College.

Contrary to Regulation 20 (2) (c) of the Prison Service (Code of Conduct) Regulations 1990 and General order #61 of 2012.

That you, Prisons Officer II #2295 Ceron Richards was Disobedient to Orders on February 15, 17, 19 and 25 2016 when your failed to present your Prison issued H&K 9mm Semi-Automatic Pistol, Serial #27-054485, and two (2) H&K Magazines with twenty six (26) rounds of Ammunition to the Prison Armourer. Prisons Officers II #2399 Rudy Mahase for Inspection at the Prisons Training College.

Contrary to Regulation 20 (2) (c) of the Prison Service (Code of Conduct) Regulations 1990 and General order #61 of 2012.

Mr. Allan Nanan will communicate with you in due course.”

21. So that the second set of allegations treats with the issue of the loss of the firearm, ammunition and holster, failure to present for inspection in January and failure to present for inspection in February. It is patent that IO Nanan did not request a statement from Richards in respect of the second set of allegations. In fact Nanan testified that his recommendation was that charges be laid in keeping with the first set of allegations. See paragraph 10 of the Nanan affidavit of the 23rd February 2017. It is to be noted that the report submitted by Nanan is not before this court.
22. By letter of the 22nd November 2016, the COP wrote to Richards informing him that Assistant Superintendent of Prisons Mr. Anwar Hoosaney was appointed as IO in relation to the second set of allegations. By letter of the 29th December 2016, Hoosaney wrote to Richards requesting a statement in relation to the second set of allegations. There is no evidence that Richards responded in writing to the second set of allegations although given the opportunity so to do and in any event the second set of allegations are not relevant to this claim.
23. Richards also alleged that several other officers had in fact lost their service firearms but none of them were suspended. He led evidence from a retired COP **Martin Martinez** in relation to one Hazel Murray in particular. Two affidavits were sworn to and filed by

Mustaq Mohammed on behalf of the defence. The first affidavit was filed in opposition to the affidavits filed in support of the claim and a supplemental was subsequently filed. The crux of both affidavits when the chaff is dusted off is that having checked both type of Personnel files for all the officers named by the claimant as being similarly circumstanced and treated differently, no record was found of those officers ever having lost their firearms. At the hearing, the claimant withdrew his ground of challenge against the second defendant in relation to these facts, namely his argument on inequality of treatment taken pursuant to section 4(d) of the Constitution.

24. In summary therefore, the evidence demonstrates that Richards was suspended based on the report of Nanan into the first set of allegations. Those are the allegations attached to the letter of the 30th August 2016, directing him to cease reporting for duty. The second set of allegations are not relevant to the claim before this court.

25. Before passing on to other matters there is one matter that must be mentioned. Richards has sought in his affidavit in support to set out matters relating to a letter which he wrote to His Excellency the President of the Republic calling for the removal of the then Chairman of the PSC and he alludes to a court action filed by him and others. For the avoidance of doubt the court wishes to make it clear that in its view, these matters are wholly irrelevant to the claim before it and no weight whatsoever has been afforded to any issue purportedly raised by the inclusion of these facts in the affidavit whether obliquely or otherwise. This matter is dealt with in passing later on in this decision.

Relevant Legislation and Regulations

Misconduct

23. *Regulation 20 of the Prison Service (Code of Conduct) Regulations provides that*

20. (1) An officer who without reasonable excuse does an act which –

- (a) amounts to failure to perform in a proper manner any duty imposed upon him as an officer;
- (b) contravenes any of these Regulations;
- (c) contravenes any written law relating to the Service; or
- (d) is otherwise prejudicial to the efficient conduct of the Service or tends to bring discredit on the reputation of the Service or of the Public Service,

commits an act of misconduct and is liable to such punishment as is prescribed by Regulation 110(1) of the Public Service Commission Regulations.

Regulation 20(2)(a)(i) of the Prison Service (Code of Conduct) Regulations provides:-

(2) Without prejudice to the generality of subregulation (1) an officer commits an act of misconduct and is liable to such punishment as is prescribed by regulation 110(1) of the Public Service Commission Regulations if he is guilty of any of the following:-

(a) Discreditable conduct, that is to say, if he –

- (i) While on or off duty acts in a disorderly manner of any manner prejudicial to discipline or likely to bring discredit on the Service.

Regulation 20(2)(f) of the Prison Service (Code of Conduct) Regulations provides:-

(2) Without prejudice to the generality of subregulation (1) an officer commits an act of misconduct and is liable to such punishment as is prescribed by regulation 110(1) of the Public Service Commission Regulations if he is guilty of any of the following:-

(f) Failure to account, that is to say, if he fails to account for, or to make a prompt or true return of any money or property for which he is responsible whether in connection with his duties as a prison officer or with any club or fund connected with the prison or the staff of the Service.

On suspension and interdiction

24. Regulation **88** of the PSC Regulations reads;

(1) When the Commission becomes aware of any act of indiscipline or misconduct and the Commission is of the opinion that the public interest or the repute of the public service requires it, the Commission may direct the officer in writing to cease to report for duty until further notice from the Commission, and an officer so directed shall cease to perform the functions of his office forthwith.

(2) An officer directed to cease to perform the duties of his office in accordance with sub-regulation (1) shall continue to draw full salary until notice is given to him by the Commission under regulation 89.

25. Regulation **89** PSC Regulations;

(1) Where there have been or are about to be instituted against an officer—

(a) disciplinary proceedings for his dismissal; or

(b) criminal proceedings, and where the Commission is of opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission shall interdict him from such performance.

(2) The effective date of interdiction shall be—

(a) where an officer has continued to perform the duties of his office, the date of receipt by him of the notification of his interdiction;

(b) where, in accordance with regulation 88, an officer has ceased to perform the duties of his office, such date as the Commission may direct.

(3) An officer so interdicted shall, subject to the provisions of regulation 114, be permitted to receive such proportion of the pay of his office, not being less than one-half, as the Commission may determine, after taking into consideration the amounts being deducted per month from the pay of the officer.

(4) If disciplinary proceedings against any such officer result in his exoneration, he shall be entitled to the full amount of the remuneration which he would have received if he had not been interdicted, but if the proceedings result in any punishment other than dismissal, the officer shall be allowed such pay as the Commission may in the circumstances determine.

26. Regulation **90** of the PSC Regulations reads;

(1) Where a report or allegation of indiscipline or misconduct is received other than a report or allegation of indiscipline or misconduct to which regulation 85 applies, the Permanent Secretary or Head of Department shall report the matter to the Director for the information of the Commission and concurrently warn the officer in writing of the allegation of indiscipline or misconduct and shall forthwith refer the matter to an investigating officer appointed by him.

(2) The investigating officer shall be appointed from the Ministry to which the officer is assigned and shall hold an office in a grade higher than that of the officer against whom the allegation has been made.

(3) The investigating officer shall, within three days of his appointment, give the officer a written notice specifying the time, not exceeding seven days from the date of the receipt of such notice, within which he may, in writing, give an explanation concerning the report or allegation to the investigating officer.

(4) The investigating officer shall require those persons who have direct knowledge of the alleged indiscipline or misconduct to make written statements within seven days for the information of the Commission.

(5) The investigating officer shall, with all possible dispatch but not later than thirty days from the date of his appointment, forward to the Commission, for the information of the Commission, the original statements and all relevant documents, together with his own report on the particular act.

(5A) Where the Commission considers that the circumstances before it warrants an extension of time, the period referred to in sub-regulation (5) may be extended by a period not extending thirty days.

(6) The Commission, after considering the report of the investigating officer and any explanation given under sub-regulation (3), shall decide whether the officer should be charged with an offence, and if the Commission decides that the officer should be so charged, the Commission shall, as soon as possible, cause the officer to be informed in writing of the charge together with such particulars as will leave the officer under no misapprehension as to the precise nature of the allegations on which the charge is based.

(7) Where, in the explanations given under sub-regulation (3), the officer makes an admission of guilt, the Commission may determine the penalty to be awarded without further inquiry.

The grounds of challenge

ILLEGALITY

26. It is the submission of Richards that the decision is illegal as it was made ultra vires the power of the PSC. In so saying he submits that the suspension was based on alleged misconduct which has no foundation in law as there exists no law, Order, disciplinary

offence or procedural requirement relating to the securing or care of firearms and ammunition issued by the service.

27. Further, he submits that the evidence demonstrates that he gave a statement to Mr. Nanan in which, in relation to the specific allegations made against him, he demonstrated that he did in fact secure his firearm which was stolen, the result being that he did in fact account for the firearm. In relation to this ground the court would dispense early with this submission. This court cannot aver unto itself the authority or jurisdiction to determine whether the explanation given by Richards in his statement of the 19th July 2016 demonstrates that he did in fact account for his firearm. That is not the function of the court in reviewing the decision of the PSC. To do so would be to usurp the functions of the PSC. What however is clear on the evidence is that Mr. Nanan provided Richards with an opportunity to respond to the allegations of failing to properly secure the firearm and also to account for it from the date it was reported stolen and Richards availed himself of that opportunity. Therefore in the court's view, the response given by Richards has to relation to the ground of illegality raised by him.

28. The first defendant submits that in determining the issue of illegality, the court must construe the content and scope of the instrument conferring the duty or power upon the decision maker. That the courts when exercising the power of construction are enforcing the rule of law by requiring administrative bodies to act within the four corners of their powers or duties. *See De Smith's Judicial Review 6th Ed at page 225, paragraph 5-002.* That the submissions by the claimant are therefore of no merit in this regard as the PSC is clearly vested with the power to discipline public officers for misconduct under section 121(1) of the Constitution. Further that the Regulations provide a set procedure for the disciplinary process. Additionally, Regulation 88 provides for the PSC to direct that an officer cease reporting for duty where is becomes aware of any act of misconduct and it is of the opinion that the public interest or repute of the Prison Service requires it. The PSC has referred to this stage as the suspension or awareness stage of the process.

29. In the court's view, standing on its own, the principle of illegality cannot assist the claimant. An examination of the walls of the power conferred on the PSC to direct that an officer cease reporting for duty under regulation 88 so long as it becomes aware of any act of indiscipline or misconduct and the Commission is of the opinion that the public interest or the repute of the public service requires it is wide enough so as to statutory enable the PSC to suspend for any act of misconduct. It cannot therefore be successfully argued that the PSC went outside the walls of such a power. But that is not the end of the illegality argument as the issue of whether the action of the PSC was ultra vires its powers is inextricably linked to the issue of illegality in the broader context.

ULTRA VIRES

30. According to Lord Diplock in the *locus classicus* *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All ER 935 at page 949 j to 950 b: “*For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of "the prerogative." Where this is the source of decision-making power, the power is confined to executive officers of central as distinct from local government and in constitutional practice is generally exercised by those holding ministerial rank.*”

31. The claimant argues that in order for the decision of the PSC to stand, the decision must have been validly made in keeping with the power conferred by the statute. In so saying the claimant submits that the allegations against Richards do not fall within the ambit of

the definition of either “indiscipline” or “misconduct” as set out in the regulation that grants the power to the PSC to suspend. The does not however agree with this submission for the following reasons.

32. Firstly, Regulation **20** of the **Prison Service (Code of Conduct) Regulations**, the material parts of which are set out supra, provide for both general and specific forms of misconduct by Prison Officers, regulation 20(2)(f) being of specific relevance to the circumstances where an officer fails to account for prison property.
33. Secondly by the letter of suspension, the PSC set out the specific allegations in no uncertain terms, those allegations being failure to adequately secure and failure to account for the firearm and ammunition. While these are referred to as the first set of allegations for the purpose of this judgment it is equally clear that the allegations are quite separate and distinct from each other, so that two circumstances of misconduct are actually alleged.
34. Thirdly, the nature of the allegation in the court’s view falls squarely within the ambit of the power conferred on the PSC as the power is defined and circumscribed by that which may reasonably be considered in law (without more) to be allegations of misconduct. **Regulation 20** of the code of conduct provides in general form that discreditable conduct will amount to an act of misconduct. In this regard it to be noted that the remit of the PSC at this stage is not one of making a determination as to whether Richards is in fact guilty of misconduct but its remit is limited to treating with and considering any allegation of misconduct which on the face of it may cause it exercise the power given to it by regulation 88.
35. The court therefore does not agree with the submission of the claimant that the suspension of the claimant was based on one which has no foundation in law in that a condition precedent for the exercise of the power, namely, the demonstration of misconduct is absent. Misconduct is a defined offence and it is to be noted that as matter of common sense and the regulation must be read in its ordinary sense to mean that the power is exercisable so

long as an **allegation** of misconduct it brought to the attention of the PSC as by this stage charges have not yet been laid far less proven.

36. In relation to the second allegation, for the reasons set out later on in this judgment under the rubric “Irrationality”, it is clear that the second allegation contained in the first set of allegations does not appear to be founded on law and is in fact inconsistent with the law. As a consequence it means that the exercise of the power to suspend based on an allegation which is itself one that is inconsistent with the law is fertile ground for a finding by this court that in respect of the second allegation only, the PSC would have acted ultra vires its powers when suspending Richards and the decision to suspend in so far as the second allegation is concerned is therefore illegal. The effect of that action however, having regard to the finding in respect of the first allegation cannot be that the decision to suspend is quashed as the ground of ultra vires applies only to the second allegation. A suitable declaration will however be made in that regard.

37. It is also to be noted that the report of Nanan has not been disclosed to this court. But the absence of the report is not fatal to the defendants submissions on this point. What is important is that the basis upon which the power is invoked, is the allegation of misconduct being brought to the attention to the commission. In that regard it is therefore the finding of the court that the PSC has not acted ultra vires its powers under regulation 88 in relation to the first allegation.

UNREASONABLE DELAY/ SECTION 4(B) OF THE CONSTITUTION-PROTECTION OF THE LAW

38. Further, the claimant has submitted that some five months having elapsed between the time the incident occurred and the taking of the impugned decision by the PSC, the delay was unreasonable and was in breach of section **15(1) of the Judicial Review Act**. The claimant

relied on the dicta of Boodoosingh J in *Devant Maharaj v AG* CV2009-03591 at paragraph 60;

“unreasonable delay in the appointment of members of the Integrity Commission can in an appropriate case lead to a breach of the protection of the law clause of the Constitution. I also find that notwithstanding the significant difficulties faced by the President there was unreasonable delay in making the appointments to the Integrity Commission on this occasion.”

39. Section 15(1) of the Judicial Review Act reads;

“Where-

(a) a person has a duty to make a decision to which this Act applies;

(b) there is no law that prescribes a period within which the person is required to make that decision; and

(c) the person has failed to make that decision;

a person who is adversely affected by such failure may file an application for judicial review in respect of that failure on the ground that there has been unreasonable delay in making that decision.”

40. The submission of the claimant is therefore that the claimant was deprived of the right to protection of the law under section 4(b) of the **Constitution**. He relies on the following authorities;

Jerome Boodhoo v Attorney General of Trinidad and Tobago, [2004] UKPC 17 in which Lord Carswell, at Paragraph 12 stated:

“In their Lordship’s opinion delay in producing a judgment would be capable of depriving an individual of his right to the protection of the law, as provided for in section 4 (b) of the Constitution of Trinidad and Tobago, but only in circumstances where by reason thereof the judge could no longer produce a proper judgment or the parties were unable to obtain from the decision the benefit which they should. For example, on an application to prevent

the threatened abduction of a child, any delay in giving judgment might deprive both the applicant and the child of the benefit which the legal remedy was there to provide. Their lordships do not think it profitable to attempt to define more precisely the circumstances in which this may occur or to specify periods of delay which may bring about such a result, since cases vary infinitely and each has to be considered on its merits applying this principle.”

41. He also relies on the judgment of Their Lordships of the Privy Council in **Sam Maharaj v The Prime Minister of Trinidad and Tobago** PC appeal 56 of 2015 in which Their Lordships of the Judicial Committee at paragraph 37 stated’

“Access to the courts in order to challenge a claimed breach of an individual’s legal rights is clearly an important aspect of the constitutional protection provided for in section 4(b). But, for the protection to be effective, access to justice must be prompt and efficacious. In this case, the appellant was deprived of any form of remedy for many years. The passage of those years at least contributed to the decision that the appellant was not entitled to any tangible recompense, for instance, in the form of reconsideration of his application to be reappointed.”

At Paragraph 39 of the judgment the Court went on to state,

“The finding of the Court of Appeal such a long time after that wrong had been perpetrated cannot be said to amount to effective protection of the law. There is, moreover, the consideration that it was the government, which should have been the guarantor of his constitutional right, that denied him that right.”

42. The defence submitted that the claimant’s argument ignores the fact that the PSC was only made aware of the allegations mere days before the decision was taken to suspend so that the submission of the claimant is misconceived. Further, that at the time, the PSC was not performing a quasi-judicial function. The second defendant seems to have not submitted on this issue and in fact predicated its submission on the other constitutional ground which has been withdrawn by the claimant.

43. Section 4(b) of the Constitution reads recognizes both rights of the individual to equality of treatment before the law and protection of the law. In treating with the issue of delay as infringing the right to protection of the law, the first port of call must be the timeline of events. Richards discovered that his firearm had been stolen on the 11th March 2016 and made a report to the police station. The COP appointed an IO by letter of the 11th July 2016. There is no evidence as to who informed the COP that the firearm was no longer in the possession of Richards and when this information was given. The evidence of Mahase is that he wrote to the COP for several months the last being that of April 2016, informing him that Richards had not presented the firearm for inspection. It is also his evidence that he was informed of the theft by Richards in April. There is therefore no evidence of any steps taken by the COP between April 2016 and the 11th July 2016 when the IO was appointed. In the absence of such evidence the court infers that the period which elapsed would have been unreasonable. On the other hand however, it appears to the court that there was no unreasonable delay on the part of the PSC. The PSC first became aware of the allegations on the 2nd August 2016 according to Mrs. O' Brady and took its decision on the 23rd August 2016, some twenty-one days thereafter. In the court's view therefore, the PSC would have acted well with a reasonable period after the allegations came to their knowledge which is the material date under regulation 88 for the purpose of reckoning the time within which the PSC is to act.

44. Unreasonable delay on its own is not a basis for a finding that the individual has been deprived of the right to protection of the law. While unreasonable delay may assist a court in drawing an inference of such deprivation, whether it does in fact so do is a matter to be considered in all the circumstances of the case. Such a finding is therefore fact specific. By way of example, the Judicial Committee in *Jerome Boodhoo* found that in the circumstances where the issue concerned the failure of the judge to provide reasons for his decision, such unreasonable delay would **only** deprive the litigant of the right to protection of the law if the judge could no longer produce a proper judgment or the parties were unable to obtain from the decision the benefit which they should. In essence Their Lordships' rational appears to be grounded in proof of a consequence of the delay which tends to

prejudice the individual to the extent that he is deprived of the protection that would normally be afforded by a particular law or process.

45. In the present case, the court finds firstly that the PSC acted promptly and efficaciously in making its decision after being made aware of the allegations. The court also agreed that at the time it was not performing a quasi-judicial function as it was not required to make a determination of guilt or finding of fact on the issue of the allegations. The court also finds that the unreasonable delay between the time when the COP was informed of the allegation and his appointment of an IO would not have adversely affected the right of Richards to respond to the allegations as the evidence demonstrates that this opportunity was afforded to him by Nanan and he did in fact avail himself of it. Further, he was also able to instruct an attorney at law who wrote to the PSC on his behalf. In the result, he was not deprived of his right to protection of the law by the delay.
46. Further, the submission that the PSC has run afoul of section **15(1)** of the **Judicial Review Act** must equally fail as the duty of the PSC to make a decision within a reasonable period runs, according to regulation 88 from the time when the PSC first becomes aware of the allegations which in this case amounts to some twenty-one days.

IRRATIONALITY

47. A decision is irrational if it is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it." See the well known dicta of Lord Diplock in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) KB 223. The Wednesbury principle of irrationality is but one aspect of the general principle. A claimant need not demonstrate that the decision is a bizarre one but it is sufficient that the claimant demonstrates that there has been an error of reasoning which robs the decision of logic.
48. *Halsbury's Laws of England, Volume 61 (2010), paragraph 617* sets out the following on irrationality;

“A decision of a tribunal or other body exercising a statutory discretion will be quashed for 'irrationality', or as is often said, for 'Wednesbury unreasonableness'. As grounds of review, bad faith and improper purpose, consideration of irrelevant considerations and disregard for relevant considerations and manifest unreasonableness run into one another. However, it is well established as a distinct ground of review that a decision which is so perverse that no reasonable body, properly directing itself as to the law to be applied, could have reached such a decision, will be quashed.

Ordinarily the circumstances in which the courts will intervene to quash decisions on this ground are very limited. The courts will not quash a decision merely because they disagree with it or consider that it was founded on a grave error of judgment, or because the material upon which the decision-maker could have formed the view he did was limited. However, the standard of reasonableness varies with the subject matter of an act or decision. The court will quash an act or decision which interferes with fundamental human rights for unreasonableness if there is no substantial objective justification for the interference. By contrast, the exercise of discretionary powers involving a large element of policy will generally only be quashed on the basis of manifest unreasonableness in exceptional cases...”

49. According to *De Smith’s Judicial Review, 7th Edition, Page 602, para 11-037*, although the terms irrationality and unreasonableness are often used interchangeably, irrationality is only one facet of unreasonableness. A decision is irrational in the strict sense of that term if it is unreasoned; if it is lacking ostensible logic or comprehensible justification.

50. In *Patricia Bryan and Marlene Guy v The Honourable Minister of Planning and Sustainable Development and Edfam Limited CV2015-01498 at paragraph 32*, Dean-Armorer J stated as follows;

“It is well-established, as a matter of principle, that the ground of irrationality is notoriously high. The Court will set aside an impugned decision on the ground of irrationality, only if the decision is proved to be one which could not be made by any reasonable decision maker. Alternatively, the Court will act on the ground of irrationality,

if the decision is shown to be one which is so outrageous in its defiance at logic and accepted moral standards that no decision maker who had applied his mind to it would have arrived at the decision.”

51. In **Paul Lai v The Attorney General of Trinidad and Tobago Civ. App. No.P129 of 2012, at paragraph 106**, Moosai J.A. stated as follows;

“On this issue of irrationality in R v. Ministry of Defence ex parte Smith (1996) 1 All ER 257 [CA UK], 263, Sir Thomas Bingham MR (as he then was) endorsed the following as an accurate distillation of the principle:

“The court may not interfere with the exercise of an administrative discretion on substantive grounds save where the court is satisfied that the decision is unreasonable in the sense that it is beyond the range of responses open to a reasonable decision-maker.”

52. The statement provided to the PSC by Richards set out that he locked his firearm and ammunition in a safe at his residence which was itself locked. That he discovered on the 11th March that his home had been broken into by persons unknown and the firearm and ammunition had been stolen and that he has no way of knowing who stole the items. He also made a report to the police.

53. Regulation 5 of the **Firearms Regulations** pursuant to section 36 of the **Firearms Act** Chap: 16:01 reads;

The Commissioner of Police on granting a licence under Part II of the Act shall grant such licence subject to the following conditions to be observed by the holder thereof in addition to any other conditions subject to which the licence may be granted, that is to say-

(a) the firearms and ammunition to which the licence relates shall at all times when not in actual use be kept in a secure place with a view to preventing access to them by unauthorized persons;

- (b) *the loss of theft of any of the firearms to which the licence relates shall be at once reported to the nearest police station;*
- (c) *except the Commissioner otherwise permits, the firearm and ammunition must be kept at the permanent address of the holder of the licence and the Commissioner must be notified in writing within forty-eight hours of any change of such address and of any change in the address at which the holder of the licence is otherwise permitted to keep the firearm and ammunition.*
- (d)

54. The evidence filed by Rudy Mahase demonstrates that there are no separate provisions or procedures for the securing of a service firearm above and beyond that which is required by the law set out above. Also, the particulars of the allegations bear repeating.

“That he, Prisons Officer II #2295 Ceron Richards was Discreditable in his conduct when on March 10, 2016 he left unattended at his residence for an approximate twenty four (24) hour period, his Prison issued one (1) H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster, which was issued to him for his protection, his failure to adequately secure these items culminated in the said items being reported stolen, by him sometime between March 10, 2016 and March 11, 2016.”

Contrary to Regulation 20 (2) (a) (i) of the Prison Service (Code of Conduct) Regulations 1990.

“That he, Prisons Officer II #2295 Ceron Richards having been issued one (1) H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster for his protection, have failed to account for the said items, when he reported that they were stolen from his residence sometime between March 10, 2016 and March 11, 2016.”

Contrary to Regulation 20 (2) (f) of the Prison Service (Code of Conduct) Regulations 1990.

55. The claimant submits that having regard to the explanation provided by him to the PSC, the decision to suspend him based on those allegations was an irrational one in that the decision of the PSC is devoid of logic as a consequence of an error of reasoning. Both allegations must therefore be examined separately but before so doing the evidence of the decision making process of the PSC must be examined.
56. The court notes that Ms. O’Brady’s evidence on the information before the PSC at the time the decision was taken to suspend is devoid of any useful information which may assist a court of law in determining the rational basis for the PSC taking the decision. The court is not told of the matters which may have occupied the discussion of the PSC when determining whether the public interest or the repute of the public service requires the suspension. Why did the PSC form the opinion that preventing Richards from performing his duty was in the public’s interest and that the repute of the prison service required him to stop performing his duties, this court has not been told.
57. Further, the court is not told of the documents or information in possession of the PSC at the time the decision was taken and is therefore not privy to documents which may have been relevant to the decision. What is clear is that at the time the decision was taken, the report of the IO had not yet been delivered to the PSC. Further, that at the time the decision was taken, the letter of Mr. Saney of the 19th July 2016 was not considered by the PSC although delivered to its office. Had the PSC considered the contents of the letter (which is more detailed than the statement given by Richards), it would have noted that in addition to forwarding an explanation by Richards (in the same terms as that given by him to Nanan) he was asking for more information such as the precise regulations that he is alleged to have breached and further that he was asking for a further opportunity to be heard thereon.
58. Additionally, the PSC has not disclosed whether at the time they took the decision to suspend, they had in fact received and considered the statement dated the 19th July 2016 which Richards had given to Nanan in answer to the allegations. In fact in the court’s view, the PSC having said nothing on it, the inference appears to be (in the absence of evidence

to the contrary) that Nanan having collected the statement, would have submitted the statement along with his report in September 2016.

59. Further, the PSC has not told this court whether they were in fact in receipt of at least a preliminary report of the COP which may have formed the basis upon which to act. The bare evidence of the PSC is that they took the decision. In summary, the evidence demonstrates that on the day the decision was taken, the only material before the PSC was the bare allegation and nothing else. The report of Nanan was not before them, neither was the statement of Richards or the Saney letter.

60. It must however be noted that there exists no entitlement to be heard at this early stage of the process and therefore the decision of the PSC that in the face of such an allegation it is in the interest of the public and the repute of the Prison Service requires suspension is essentially an administrative policy decision which it is entitled to make provided of course the allegations themselves make legal sense and are not illogical. See the courts comments on Murray and Crane supra.

61. In relation to the allegation that Richards was guilty of discreditable conduct, the factual allegation contained therein is that he left his firearm unattended at his residence for a period of twenty-four hours and failed to adequately secure the firearm and ammunition. According to the allegations his actions resulted in the items being reported stolen. Regulation 5 of the Firearms Regulations is wide enough to permit a firearm user to secure his firearm while he is absent so long as it is properly secured at his place of residence. So that the gravamen of the allegation is that Richards failed to properly secure his firearm. **Regulation 20** of the code of conduct provides in general form that discreditable conduct will amount to an act of misconduct. In the court's view the allegation is that while off duty, Richards failed to properly secure his firearm thereby acting in a manner which is prejudicial to the discipline of the prison service and is likely to bring discredit to the service. Acting in a disorderly manner is only one aspect of misconduct as defined by regulation 20 but it is not the only one. Discreditable conduct also falls within the definition of misconduct under the regulation.

62. In the court's view therefore, failure to properly secure the firearm may by extension amount to misconduct once proven. The court therefore does not agree with the submission of the claimant that the definition of misconduct is only to be ascertained by recourse to the definition of disorderly conduct which is a different type of allegation. Neither does the court agree with the argument that the word discreditable must *ejusdem generis* be taken to refer to actions which are similar in nature to disorderly conduct as the regulation is clear in its terms.

63. In relation to the second allegation, the factual allegation is that when Richards reported the items stolen in keeping with the law as set out at regulation **5** of the **Firearms Regulations**, he failed to account for the property. So that according to the allegation, the fact that Richards obeyed the law was a ground upon which he could be accused of misconduct. The court accepts that on the face the allegation appears to be internally and inherently inconsistent both with the law and common sense bearing in mind the natural and ordinary meaning of the word "account" and the duty in law to report the theft. The decision to suspend based on this allegation is therefore irrational in the strict sense of that term. It is unreasoned and it is lacking ostensible logic or comprehensible justification.

64. The court therefore finds that in respect the decision to suspend based on the second allegations contained within the first set of allegations, the decision has been shown to be one which is so outrageous in its defiance of logic that no decision maker who had applied his mind to it would have reasonably arrived at the decision.

65. However, while the decision of the PSC in relation to the second allegation may have been one that is irrational in law, the decision in relation to the first allegation was not. It means therefore that the PSC's decision in relation to the first allegation not being an irrational one there is no basis to set aside the decision to suspend on this ground in all of the circumstances. Had the only allegation have been the second, the court would have been duty bound to set aside the decision to suspend on this ground. The court will however make a suitable declaration.

NATURAL JUSTICE/ PROCEDURAL FAIRNESS

66. It is the submission of Richards that he was denied the opportunity of making representations to the PSC prior to its decision to suspend him from duty. That he ought to have been specifically informed of the fact that suspension from duty was a power which the PSC could have exercised and therefore he ought to have been alerted to that consequence by Nanan on the 23rd August 2016, when he met with Richards and sought a statement from him. In that regard the claimant has relied on the dicta of Charles J in Cv2011-03448 *Joanne Caprietta v The Public Services Association of Trinidad and Tobago* at paragraph 57;

“when the General Council met on 25th August 2011 to decide upon the issue of the suspension of the Claimant, it sat as a tribunal carrying out quasi judicial functions. There was therefore an obligation on the part of the Council to ensure that the Claimant was given ample notice of the allegations against her so that she could properly prepare her case. The reason for imposing an obligation to give prior notice is usually to afford those who will be affected by the decision of the tribunal an opportunity to make representation. The notice must be served in sufficient time so as to enable such representation to be effective. (See R v Thames Magistrates Courts 1997 1AC 49). Failure to do so would always result and in fact did indeed result in substantial prejudice to the Claimant.”

67. The court therefore agreed with the submission of the defendant that in any event there is no entitlement to be heard at this stage of the process. In the case of *The Police Service Commission v Rodwell Murray* Cv App 143 of 1994, in delivering the judgment with which the Honourable Chief Justice agreed, Justice of Appeal Nelson set out with much clarity, the distinction between the law in relation to Murray as opposed to the position set out in the decision of *Rees v Crane* (1994) 2 WLR 476, a decision of the Their Lordships of the Privy Council.

68. In Murray, the court held that that the regulations of the Commission constitute a comprehensive disciplinary code for police officers, (the same can of course be said of the code of conduct for prison officers) as opposed to the provisions of section 137 of the Constitution which provides for the removal of judges which was silent as to the procedure to be followed at each stage. Neslon JA went on to add that that was the distinguishing feature in Crane and hence Their Lordships of the Privy Council commented that in the absence of the set comprehensive code, section 137 was not to be construed necessarily as excluding a right to be informed and heard at the first stage. In fact, Their Lordships went further to hold that the right to be heard at the first stage was implied in relation to section 137 in the interests of the good administration of justice and the court system as a whole. The considerations for the PSC in relation to whether to suspend are quite different and are set by regulation 88. The considerations are the public interest and the repute of the prison service.
69. This court accepts the comments made by Nelson JA in Murray at page 18, second paragraph that it is clear that in Trinidad and Tobago there exists a body of precedent on regulation 79 (regulation **88** in this case), which lays down that in the statutory disciplinary procedure applicable to prison officers (in this case), a right to be heard was not to be implied at the suspension stage (or awareness stage). However the court is of the view that such a strict application of the principle may in fact result in unfairness to this particular claimant.
70. The rules of natural justice require that the decision maker approaches the decision making process with 'fairness'. What is fair in relation to a particular case may differ. As pointed out by Lord Steyn in Lloyd v McMahon [1987] AC 625, the rules of natural justice are not engraved on tablets of stone. The duty of fairness ought not to be restricted by artificial barriers or confined by inflexible categories. The duty admits of the following according to the authors of the *Principles of Judicial Review* by De Smith, Woolf and Jowell;

- a) *Whenever a public function is being performed there is an inference in the absence of an express requirement to the contrary, that the function is required to be performed fairly. **Mahon v New Zealand Ltd** (1984) A.C. 808.*
- b) *The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a legitimate expectation of being fairly treated.*
- c) *The requirement of a fair hearing will not apply to all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative or too remote to qualify for a fair hearing. This will depend on the circumstances.*

71. In delivering the decision in **Feroza Ramjohn v Patrick Manning** [2011] UKPC 20 Their Lordships made it abundantly clear that what is fair in any given circumstance is entirely dependent of the facts of the particular case. This is what the court said at paragraph 39.

“As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, R v Secretary of State for the Home Department Ex p Doody [1994] 1 AC 531, 560. Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it. A characteristically illuminating statement of the law appearing in Bingham LJ's judgment in R v Chief Constable of the Thames Valley Police Ex p Cotton [1990] IR LR 344 (para 60) deserves to be more widely known:

"While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:

1. Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had the chance.

2. As memorably pointed out by Megarry J in John v Rees [1970] Ch 345 at p402, experience shows that that which is confidently expected is by no means always that which happens.

3. It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the complainant's position became weaker as the decision-maker's mind became more closed.

4. In considering whether the complainant's representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of a decision.

5. This is a field in which appearances are generally thought to matter.

6. Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied."

72. Fairness must be examined in the context of the scheme of the disciplinary process both as a whole and also by stages. The scheme itself admits of several stages, the first stage being the "awareness" stage as set out in the submissions of the first defendant. This stage provides the opportunity to the officer to submit his version of events in answer to the allegations to the PSC. In so doing he is free to address the issue of suspension from duties. He is to be informed of the allegations made against him at an early stage, all part of a fair process, so that he can give whatever answer he sees fit. By way of example in this matter, attorney for Richards may have included in his letter reasons against suspension of his client having also called on the PSC not to lay disciplinary charges. The gravamen of the right lies in the opportunity to be heard. So that the PSC may have considered any argument that Richards would have put forward as to why his suspension was not in the public interest or was required for the repute of the prison service.

73. The PSC in the court's view ought to have been receptive to his representations thereon as matter of fairness especially in this case for the following reasons;

- a. The PSC was aware that an investigation was being conducted at the time it made its decision to suspend but it proceeded to do so without at the least a preliminary report from the IO.
- b. The PSC was unaware that Richards had provided an explanation in person to Nanan and so they failed to consider the explanation, not as to the truth of its contents but to make a determination of whether having regard to the fact that Richards was contending that he had properly secured the firearm and a third party broke into his home and stolen it, it was nonetheless in the public interest to suspend such an officer.
- c. The PSC had received the letter from Mr. Saney which provided the statement of Richards to them and additionally sought clarification of the allegations so that a full response could be forthcoming. The PSC alleges that the letter was directed to another department within the office of the Commission erroneously. Be that as it may, it nonetheless means that the PSC did not consider the contents of the letter prior to making its decision as to suspension.
- d. It follows that the PSC would have made its decision based strictly on the bare allegations with any specific consideration being given to representations made twice by Richards.
- e. Essentially therefore, the decision appears to be one based on general policy rather than a decision that is made on a case by case basis depending on the circumstance of each case. In the court's view, this decision making process is on its own unfair.
- f. The mere fact that Richards may have another opportunity to answer the allegations is not a sufficient basis to justify the none reception and consideration of his position. The authorities are clear on this point.
- g. In this case this is especially so as his statement and letter were available at the time of the making of the decision.
- h. It also follows that the PSC failed to consider matters it ought to have considered before making the decision.

74. So that in the court's view there although there may be no right to be heard at this early stage the question becomes one of whether in the circumstances of this particular case, fairness demanded that Richards be heard prior to the PSC taking the decision to suspend. When view in context of the facts, it was clear that the PSC would have had available to it at least two representations for Richards which were not considered. These representations were relevant to the criteria to be applied by the PSC under regulation 88. The submission that the decision to suspend in this case was within the sole purview of the PSC having regard to their failure to consider the representations of the claimant which were available to them at the time cannot succeed in circumstances where the concept of fairness as an element of natural justice continues to evolve in an effort to ensure that public authorities act at all times in a manner that is fair to those persons who are directly impacted by their decisions. It is to be noted in this regard that the PSC has led not an iota of evidence in respect of the criteria and basis for its decision save and except to say that the decision was taken which itself is not an issue in this case. Just like our system of justice itself and the courts of this land, the PSC is not a sacred cow whose decisions are not subject to review and cannot be challenged. The duty lay with the PSC to demonstrate its reasons for the taking of particular decision and it has failed so to do.

75. In all of the circumstances therefore the court finds that fairness demanded that the PSC considered the representations of Richards and the decision to suspend shall be quashed.

BAD FAITH

76. The court has not been persuaded that there existed bad faith in this case. Having regard to the court's findings it is unnecessary however to treat with the issue of bad faith in detail.

DAMAGES

77. The claim for damages was specifically brought against the second defendant in respect of the breaches of sections 4(b) and 4(d) of the constitution only. The claimant withdrew one of those claims and the court has found there to be no merit in the other. The claim against the second defendant will be dismissed and the issue of damages as set out by the claimant in its claim and submissions therefore does not arise.

DISPOSITION

78. There shall be judgment for the claimant against the first defendant as follows;

- a. It is declared that the decision of the first defendant made the 23rd day of August 2016, directing that the claimant do cease to report for duty until further notice pending the outcome of the allegation made against him in particular that he, Prisons Officer II #2295 Ceron Richards having been issued one (1) H&K Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster for his protection, have failed to account for the said items, when he reported that they were stolen from his residence sometime between March 10, 2016 and March 11, 2016, Contrary to Regulation 20 (2) (f) of the Prison Service (Code of Conduct) Regulations 1990 was made ultra vires Regulation 20 (2) (f) of the Prison Service (Code of Conduct) Regulations and Regulation 88 of the Public Service Commission Regulations and is therefore illegal.
- b. It is declared that the decision of the first defendant made the 23rd day of August 2016, directing that the claimant do cease to report for duty until further notice pending the outcome of the allegation made against him in particular that he, Prisons Officer II #2295 Ceron Richards having been issued one (1) H&K

Compact 9mm pistol, Serial #27-054485, along with two (2) H&K Magazines with twenty six (26) rounds of Sellier and Belliot 9mm Ammunition and a Holster for his protection, have failed to account for the said items, when he reported that they were stolen from his residence sometime between March 10, 2016 and March 11, 2016, Contrary to Regulation 20 (2) (f) of the Prison Service (Code of Conduct) Regulations 1990 is irrational.

- c. It is declared that the decision of the first defendant made the 23rd day of August 2016, directing that the claimant do cease to report for duty until further notice pending the outcome of both allegations made against him attached to letter dated the 30th August 2016, (the said decision) breached the principles of procedural fairness and natural justice.
- d. An order of certiorari is granted. The said decision is moved into the High Court and is quashed.
- e. The first defendant shall pay to the claimant the costs of the Judicial Review Claim made against the first defendant to be assessed by an Assistant Registrar of the Supreme Court in default of agreement.
- f. The claimant shall pay to the second defendant the costs of the Constitutional Claim against the second defendant to be assessed by an Assistant Registrar of the Supreme Court in default of agreement.

Dated the 17th day of November 2017

Ricky Rahim

Judge