

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

Suit No: 1343 of 2008

BETWEEN

LT. COL TREVOR BROWNE - APPLICANT

AND

THE CHIEF OF STAFF (B.D.F.) - 1st RESPONDENT

THE ATTORNEY GENERAL - 2nd RESPONDENT

THE DEFENCE BOARD - 3rd RESPONDENT

Before The Honourable Madam Justice Maureen Crane-Scott, Judge of the High Court

2009: February 24, March 30, 31

2012: February 16, March 5

November 7.

Mr. Gregory Nicholls in association with Miss. Diana Douglin for the Applicant

Miss. Jennifer Edwards, Q.C. Solicitor General, in association with Mr. Wayne Clarke, Capt. Sandra Blackman and Miss. Sharon Deane for the Respondents

Captain Brian Clarke, attorney-at-law and *Amicus Curiae* by consent of the parties.

DECISION

- [1] **Crane-Scott J:** This is an action brought by Lieutenant Colonel Trevor Browne ('the Applicant') as Cadet Commandant of the Barbados Cadet Corps against the Chief of Staff of the Barbados Defence Force, the Attorney General of Barbados and the Barbados Defence Board (the 1st, 2nd and 3rd Respondents respectively) pursuant to the *Rules of the Supreme Court, 1982* and by which the Applicant seeks numerous declaratory orders and other relief.
- [2] On the first day of the hearing, Counsel for the respective parties, Mr. Nicholls and Mr. Wayne Clarke, both stated that the Court would not be required to make specific findings of fact with respect to the numerous allegations of mal-administration and excess of authority about which the Applicant complained in his affidavit of August 20, 2008.
- [3] Counsel for the parties also informed the Court that the problems which the Applicant had been encountering in his capacity as Cadet Commandant stemmed from differences in opinion between the Applicant and the 1st Respondent regarding the legal position of the Barbados Cadet Corps *vis-à-vis* the Barbados Defence Force and the scope of the 1st Respondent's authority under the *Defence Act, Cap. 159* to administer and direct the affairs of the Cadet Corps.
- [4] Counsel for the respective parties agreed that the Court's task on the application should therefore be limited to the interpretation of the *Defence Act, Cap. 159 of the Laws of Barbados* and, in particular, to the construction of the expression 'Cadet Force' as used in *section 4*

of the Act, establishing the Barbados Defence Force and describing its constituent parts.

- [5] The Court heard legal submissions on behalf of the Applicant and the Respondents respectively. Written Submissions were subsequently submitted by both Counsel.
- [6] The Court also had the benefit of the oral submissions of the *Amicus Curiae*, Captain Brian Clarke, who explained the applicable laws governing the power of command and the relative precedence of officers within the Barbados Defence Force.
- [7] At the Court's request, both parties submitted addenda to their written submissions limited to the specific matters identified in a letter issued on behalf of the Court on February 14, 2012.
- [8] Leave was also granted for the filing on behalf of the Respondents of 2 additional affidavits by Major Glyne Sinatra Grannum and Edison Kenison Alleyne respectively. The affidavits sought to supply the Court with the additional information it had requested as to the manner in which, and under whose management and control funds allocated to the Barbados Cadet Corps have historically been and are currently budgeted, allocated, managed and accounted for administratively, as well as under the various *Appropriation Acts* and the *Financial Management and Audit Act, Cap 5* and its associated Rules.
- [9] **The Issues for the Court's determination:** Having considered the several affidavits filed in the proceedings, the oral and written submissions (including the addenda thereto) of Counsel for the respective parties, together with the oral submissions of the *Amicus*

Curiae, Captain Brian Clarke, the Court is satisfied that on this application 3 broad legal issues have arisen for its determination. These issues are as follows:

- (i) what is the true legislative meaning of the expression “*Cadet Force*” as used in *section 4(c)* of the *Defence Act, Cap. 159*?;
- (ii) Is the Barbados Cadet Corps which is regulated under *Part XI* of the *Defence Act*, and described in *section 215*, “a *Cadet Force*” for purposes of *section 4(c)* and consequently, by law, a constituent arm of the Barbados Defence Force?; and
- (iii) Can the 1st Respondent, as Chief of Staff of the Barbados Defence Force, lawfully issue ‘orders and directives’ to the Applicant, in his capacity as Cadet Commandant, in relation to the command and management of the Barbados Cadet Corps?

[10] The provisions of the *Defence Act, Cap. 159* will now be considered with a view to resolving the issues identified above.

[11] *Issue 1- What is the meaning of the expression “Cadet Force” in section 4(c) Should the expression be interpreted literally and in isolation from the Defence Act as a whole or should a purposive construction be employed to ascertain its true Parliamentary intent?*

As the affidavits of Lt. Col. Trevor Browne and Col. Alvin Quintyne clearly show, lying at the heart of the dispute leading to these proceedings, is, for want of a better expression, a “turf war” which is being waged for control of the Barbados Cadet Corps.

[12] From a legal perspective, the dispute essentially revolves around the question whether the Barbados Cadet Corps regulated under *Part XI* of the *Defence Act, Cap. 159* and described in *section 215* thereto is

by law a part of the Barbados Defence Force. Central to this issue is a determination by the Court as to the true construction which is to be placed on the expression “*a Cadet Force*” which appears in **section 4(c)** of the *Defence Act*.

[13] **Section 4** of the *Defence Act, Cap. 159* purports to establish the Barbados Defence Force and describes its 3 constituent arms or “*Forces*” in the following terms:

“4. *There shall be a body of Her Majesty’s forces to be known as the Barbados Defence Force consisting of*

(a) a regular Force;

(b) a reserve Force to be known as the Barbados Defence Force Reserve; and

(c) a Cadet Force.”

[14] Read in isolation from the Act as a whole, **section 4** appears, at first glance, to be clear and plain and to present no obvious difficulties. However, as will appear from the legal submissions of the parties summarized below, the Court has in fact been presented with no less than 3 different interpretations of the expression “*a Cadet Force*.” Ultimately, it will be the task of this Court, as interpreter of the law, to construe the provision in light of the parties’ submissions and the applicable law, with a view to ascertaining what Parliament actually intended: *Bennion on Statutory Interpretation, 5th Edition at pp. 122-123*.

[15] The respective legal submissions of the parties are summarized below *seriatim*.

- [16] *For the Applicant:* In his oral and written submissions presented at trial, Counsel for the Applicant, Mr. Gregory Nicholls, urged the Court to find that the ‘*Barbados Cadet Corps*’ in **Part XI** is not part of the ‘*Barbados Defence Force*’ established by **section 4** of the **Defence Act**. He submitted that the expression ‘*a Cadet Force*’ in **section 4(c)** of the **Defence Act, Cap. 159**, is clear and unambiguous and should be given its literal meaning so that the expression is interpreted as referring literally to ‘*a Cadet Force*’ completely different in character from the ‘*Barbados Cadet Corps*’ mentioned in **section 217** of the Act. He asked the Court to resist Mr. Wayne Clarke’s invitation to interpret the reference in **section 4(c)** of the Act to “*a Cadet Force*” as a reference to the ‘*Barbados Cadet Corps*’.
- [17] In support of his contention, Counsel for the Applicant, Mr. Nicholls, cited two presumptions of interpretation from ***Bennion on Statutory Interpretation (2nd Edition, 1992 sections 284 and 285)***. Firstly, he submitted that that the text of an enactment is to be regarded as the pre-eminent indication of the legislator’s intention and secondly that, *prima facie*, the legal meaning of an enactment as intended by the legislature is that which corresponds with the literal meaning.
- [18] He also submitted that the expressions “*a Cadet Force*” and “*Barbados Cadet Corps*” had been used severally and separately in the Act and there was therefore no basis upon which the expression “*a Cadet Force*” in **section 4(c)** could be construed or read as synonymous with ‘*Barbados Cadet Corps*’ without doing violence to the legislative scheme set out in **Part XI** of the Act.

- [19] He cited the following West Indian authorities in support of the proposition that where the language of a statute is clear and unambiguous it must be given its natural and ordinary meaning: *Sir Lindsay Parkinson & Co. Ltd v. Scholsberg* (1961) 3 WIR 110; *Hope v. Smith* (1963) 6 WIR 464; *Felix v. Burkett* (1964) 7 WIR 339; *Enmore Hope Village District Council v. Mohammed Shaw et al* (1974) 21 WIR 275; *Eaton Baker and Anor v. R* (1975) 23 WIR 463 and *de Freitas v. Permanent Secretary of the Ministry of Agriculture* (1998) 53 WIR 131.
- [20] To further buttress his submission, Mr. Nicholls referred to *section 6* of *the Defence Act* and to the definition of “unit” in *section 2* of the Act. *Section 6* provided that the Barbados Defence Force may be formed into units and a “unit” had been defined as meaning any independent portion of the Barbados Defence Force which is not higher than a battalion or any equivalent body of troops or any other body of the Force declared by the Force to be a unit.
- [21] Mr. Nicholls contended that *section 6* provided a further reason why the reference in *section 4(c)* of the Act to “a Cadet Force” could not be construed as a reference to the ‘*Barbados Cadet Corps*’ because schoolchildren, as he put it, were not part of any battalion or any equivalent body of troops which could be formed into units.
- [22] Referring also to *section 7* of the Act, Mr. Nicholls observed that the section gave the Governor General power to order the whole or any part of the Barbados Defence Force to be deployed outside of Barbados. He noted that the section had expressly exempted members of the “reserve Force” from call-out outside of Barbados but that the

section was silent in relation to members of the “*Cadet Force*”. He submitted that if the words “*Cadet Force*” in **section 4(c)** were interpreted as synonymous with the ‘*Barbados Cadet Corps*’ it would have the effect of including within the Barbados Defence Force, school children and cadets who would be liable to be called-out by the Governor General for overseas service in a manner in which officers or soldiers the Barbados Defence Force Reserve are not.

[23] Referring once again to **section 4**, he further submitted that school children and cadets ought not to be regarded as part of ‘*Her Majesty’s forces*’ simply because, as he put it, “the Chief of Staff wants to be in command of the Barbados Cadet Corps”. He urged the Court to carefully consider the implications of the Respondents’ invitation to the Court to alter, what he submitted, were the unambiguous words of the Act so as to give a meaning to the expression “*a Cadet Force*” which was not expressed in the legislation nor envisaged in the scheme of the Act.

[24] In the addenda to his written submissions filed on February 24, 2012, Mr. Nicholls submitted that the practical consequence of the Court applying a literal interpretation to **section 4(c)** of the Act was the establishment of a “*Cadet Force*” as a completely different entity in law from the ‘*Barbados Cadet Corps*’. He argued that if Parliament’s intention had been to make the ‘*Barbados Cadet Corps*’ (a body which had already been in existence for 77 years prior to the Act) synonymous with that “*Cadet Force*” specified in **section 4(c)** of the Act, it would, in the interests of consistency, have done exactly what it had done in relation to the “*Barbados Defence Force Reserve*” and

that would have been to specifically cross-reference the term “*a Cadet Force*” with the ‘*Barbados Cadet Corps*’ mentioned in **Part XI** of the Act.

[25] In the addenda to his written submissions filed on February 24, 2012, Mr. Nicholls sought to counter Mr. Wayne Clarke’s submissions that the Court should adopt a purposive interpretation of the expression. Mr. Nicholls submitted that the practical effect of the Court applying a purposive approach to the interpretation of the expression “*a Cadet Force*” and holding the expression to be synonymous with the ‘*Barbados Cadet Corps*’ would result in an absurdity. This was because, according to Mr. Nicholls, in view of **section 5** of the Act, such an interpretation would make the children of Barbados aged 11 to 19 who comprise the ‘*Barbados Cadet Corps*’, subject to the command of the Barbados Defence Force and in effect responsible for the defence of Barbados.

[26] Finally, without identifying specifically which laws of Barbados would be contravened if the Court were to hold the ‘*Barbados Cadet Corps*’ as part of the Barbados Defence Force, Mr. Nicholls argued that such a decision would be both contrary to the laws of Barbados as well as repugnant to Barbados’ United Nations treaty obligations and customary international law which, he submitted, explicitly prohibit the use of ‘child soldiers’ in conflict.

[27] *For the Respondents:* In his oral and written submissions, Counsel for the Respondents, Mr. Wayne Clarke, urged the Court to adopt a purposive interpretation and to construe the expression “*a Cadet*

Force” in **section 4(c)** of the Act as synonymous with the expression ‘*Cadet Corps*’ found in **Part XI** of the Act.

- [28] Citing dicta of Lord Wensleydale in *Grey v. Pearson [1857] 6 H.L. Cas 61*, Mr. Clarke submitted that the Court was entitled to depart from construing the expression ‘*Cadet Force*’ in **section 4(c)** according to its literal meaning where such a construction would lead to absurdity. The absurdity would arise, he said, since the ‘*Barbados Cadet Corps*’ would effectively be a separate and distinct body within the Act and completely outside the command and control of the Chief of Staff of the Barbados Defence Force in circumstances where Parliament intended the Cadet Corps to be “*a Cadet Force*” within the Barbados Defence Force.
- [29] Mr. Clarke also cited *Nothman v. Barnet London Borough Council [1978] 1 WLR 220*; *Pepper v. Hart [1993] AC 593* and *R. v. Barnet LBC [1978] 2 AC 309* and urged the Court to read the Act as a whole and to apply instead a “purposive” approach to statutory construction which would give effect to the true intention of the Legislature.
- [30] In the addenda to the Respondent’s written submissions filed at the Court’s request on February 23, 2012, Solicitor General, Miss. Jennifer Edwards, Q.C. submitted that the expression “*a Cadet Force*” in **section 4(c)** was intended by Parliament to be an overarching reference to an arm of the Defence Force dealing with the youth. She further submitted that the words “*Cadet Force*” and “*Cadet Corps*” were descriptive and pointed out that **section 4** was the only section in the entire Act which made reference to “*a Cadet Force*”.

- [31] Miss. Edwards stated that *Part XI* of the Act contained various provisions dealing with the ‘*Cadet Corps*’ and submitted that this was consistent with the scheme of the Act. She drew the Court’s attention to *Part X* of the Act which contained provisions relating to the Barbados Coast Guard which, she said, was a unit of the “*regular Force*”. She also pointed out that the Coast Guard similarly had not been specifically mentioned in *section 4(a)*.
- [32] Clearly not in agreement with Mr. Wayne Clarke’s earlier submission that the expression “*a Cadet Force*” was synonymous with the expression ‘*Cadet Corps*’ found in *Part XI* of the Act, Miss. Edwards submitted that in her view the first expression was not intended to be synonymous with the second or with the expression *Barbados Cadet Corps*. She submitted that the expression “*Cadet Corps*” was instead intended to refer to a unit of the “*Cadet Force*”.
- [33] In support of her submission, the Solicitor General cited an Explanatory Note taken from Appendix I to Annex “A” of the *White Paper on the Establishment of the Barbados Defence Force*, dated January, 1978 which, she said, showed the place of the ‘*Barbados Cadet Corps*’ within the overall organizational chart of the proposed Barbados Defence Force.
- [34] Paragraph 13 of the Explanatory Notes corresponding to Note 14 on the Organizational Chart for the proposed Barbados Defence Force provided as follows:

“BARBADOS CADET CORPS”

“13. There has been much discussion about the re-organization and revitalization of the Cadets. Once the Defence

Force has been established, this will be a priority task for Headquarters Barbados Defence Force.”

[35] The Solicitor General also supplied the Court with a copy of the ***Official Report of the House of Assembly Debates, Second Session 1976-1981***. She referred in particular to page 265 and to what she described as an enlightening extract from the speech of Prime Minister and Minister of Defense, the Right Honourable J.G.M. Adams made on January 24, 1978 on the occasion of the debate on the Resolution to Approve the Proposals in the White Paper entitled ***“Proposals for the Establishment of a Barbados Defence Force”***.

[36] The extract from the speech of the Right Honourable Prime Minister and Minister of Defense reads as follows:

“There will also be the Cadet Corps which we hope to extend to children of school age. This will form part of our Defence Force.”

[37] Miss. Edwards also supplied the Court with a copy of the ***Official Report of the House of Assembly Debates, Second Session 1976-1981*** and to the debate on the Bill for the introduction of the ***Defence Act, 1979*** which took place in the House of Assembly on Tuesday, July 10, 1979.

[38] Miss. Edwards drew the Court’s attention to page 2610 of the Report and in particular to the following extract from the speech of the Right Honourable J.G.M. Adams as he described ***Part XI*** of the Bill:

“Part XI of the Act deals with the Barbados Cadet Corps which will be under the jurisdiction of the Defence Force. There will be two types of Cadet Corps envisaged when the Bill is passed.

Cadet Corps formed at secondary schools; and Hon. members I know will be glad to hear that every encouragement will be given to all secondary schools and not just to the so-called grammar schools, to form Cadet Companies, and Cadet Companies formed independently of secondary schools. Full regulations are under contemplation relating to the setting up of Cadet Companies, but these are not contained in the Draft which has so far been circulated.”

[39] In conclusion, Miss Edwards submitted that it was her view that the ‘*Cadet Corps*’ is a part of the ‘*Cadet Force*’ which is itself part of the body known as the Barbados Defence Force.

[40] Discussion: Faced (as it was in this case) with a situation where the legal meaning of an enactment is in dispute, the Court recognized that it was essentially being required to decide between the 3 opposing constructions put forward by Counsel for the parties. However, as the interpreter of the law, the Court was also aware that in the final analysis, it is always open to it to reject the constructions which have been advanced by the parties and to apply its own view of the Legislature’s intention. ***Bennion, 5th Edition at pp. 122-123.***

[41] The Court was also mindful of the requirement that its decision is to be determined by what it considers to be the intention of Parliament as expressed in the enactment, and further that “*the essence of the interpretation of statutes is an earnest seeking after the intention of Parliament or perhaps, more accurately, the deemed intention of Parliament.*” ***See per Sir John Donaldson, M.R. in Gubay v.***

Kingston (Inspector of Taxes) [1983] 1 WLR 709 at 720 cited in Bennion, 5th Edition at p. 123.

[42] Although Counsel for the Applicant urged the Court to find that the words “*a Cadet Force*” were clear and unambiguous and should, accordingly, be construed literally as a reference to ‘*a Cadet Force*’ completely different in character from the ‘*Barbados Cadet Corps*’ mentioned in **section 217** of the Act, the Court was not persuaded that a literal interpretation of **section 4(c)** would enable it to ascertain the true intention of the Legislature.

[43] This is because unlike the other expressions in **section 4**, namely, “*a regular Force*” and “*a reserve Force*,” references to which can be found in other sections (and Parts) of the Act, the expression “*a Cadet Force*” is only employed in **section 4(c)** and appears to hang on its own in **section 4** without any express cross-reference to any other provision of the Act.

[44] Even if the Court were (as Mr. Nicholls urged) to apply the literal interpretation and to give the expression “*a Cadet Force*” its natural and ordinary meaning, the Court found that it was unable, simply by examining **section 4** of the Act, to determine the nature of the “*Force*” which Parliament had expressly declared would comprise the third arm of the Barbados Defence Force.

[45] At the hearing, and in answer to a specific question from the Court as to what Parliament had intended by the expression “*a Cadet Force*”, Mr. Nicholls submitted that there was a provision in **Part XI** of the Act which permitted the Barbados Defence Force to create a Cadet Force as a recruiting unit.

- [46] Mr. Nicholls further submitted that the fact that this had not yet been done did not mean that one had to make the words “*a Cadet Force*” synonymous with the existing school-based ‘*Barbados Cadet Corps*’. He argued that there was also no reason why the Court should assume that Parliament had made a mistake in **section 4(c)** by not expressly cross-referencing the expression “*a Cadet Force*” with the “*Barbados Cadet Corps*” dealt with in **Part XI**.
- [47] In his addendum, Mr. Nicholls also submitted that both expressions had been used severally and separately in the Act. He submitted that there was, in his view, no basis upon which the expression “*a Cadet Force*” in **section 4(c)** could be construed or read as synonymous with ‘*Barbados Cadet Corps*’ without doing violence to the legislative scheme set out in **Part XI** of the Act.
- [48] The difficulty with applying a literal interpretation to the expression “*a Cadet Force*”, as Mr. Nicholls urged, is that it seemed absurd and somewhat illogical and impractical for Parliament in **section 4** to have established the Barbados Defence Force and expressly declared it to consist of 3 distinct “*Forces*” and yet, in relation to the “*Cadet Force*”, have apparently made no provision anywhere in the Act to define it, or to recognize it, or to bring it into force and effect.
- [49] What is more, a literal reading of **section 4(c)** would effectively mean that Parliament must be taken to have intended to declare “*a Cadet Force*” which was a hitherto unknown and non-existent body or “*Force*” to be a constituent part of the Barbados Defence Force.
- [50] The Court found Mr. Nicholls’ submission that the reference in **section 4(c)** to “*a Cadet Force*” is to be construed as a reference to

the establishment of a unit of independent companies of persons as a recruiting arm of the Barbados Defence Force, to be a selective and unconvincing characterization of *section 215(b)* of the Act.

[51] Furthermore, as examination of *section 215(a)* will show, Mr. Nicholls has in his submissions to the Court clearly overlooked the fact that Parliament has also expressly included within the term “*Barbados Cadet Corps*” a unit comprised of school companies consisting of pupils of secondary schools enrolled in the Corps with the approval of the headmaster and of the officers commanding those companies.

[52] If Parliament’s intention was for the expression “*Cadet Force*” to be restricted to the unit of the “*Barbados Cadet Corps*” referred to in *section 215(b)* of the Act only, surely it would have stated so expressly. In the absence of any such restriction, it would seem using Mr. Nicholls’ own logic that Parliament could (as Mr. Clarke and Miss. Edwards contend) have intended the expression to be read broadly to describe both units which according to *section 215 (a)* and *(b)* would henceforth comprise the ‘*Barbados Cadet Corps*’.

[53] The Court also had some sympathy for the view expressed by Mr. Wayne Clarke that the literal interpretation of the expression “*a Cadet Force*” will mean that, notwithstanding the apparent contrary intent of *section 4*, the “*Barbados Cadet Corps*”, a body regulated within *Part XI* of the Act, is effectively completely separate from and no part of the Barbados Defence Force.

[54] In its quest to discover the true intention of Parliament, the Court was, notwithstanding Mr. Nicholls’ submissions to the contrary, obliged to

consider whether there was a possibility that Parliament could have made so obvious a mistake. The Court also considered whether it was also possible that the use of the expression “*Cadet Force*” in **section 4** was a conscious and deliberate Legislative decision, designed to achieve some obscure objective not immediately obvious on a literal reading of the section.

[55] In this regard, the Court found it quite noteworthy that in his attempt to explain the possible Parliamentary intent of the expression “*Cadet Force*” in **section 4**, Mr. Nicholls had been forced to look outside the section itself and to refer the Court to **Part XI** of the Act which, he said, permitted the Barbados Defence Force to create a Cadet Force as a recruiting unit.

[56] Ultimately after considering the matter, the Court was satisfied that the meaning of the expression “*a Cadet Force*” was obscure, and further that the literal meaning of **section 4(c)** propounded by Mr. Nicholls was unworkable and impracticable and would lead to absurdity.

[57] In deciding against adopting a literal approach to **section 4(c)**, the Court also accepted the principle that while as a general rule, the literal meaning of words in a statute is *prima facie* presumed to convey Parliament’s intent and to carry great weight, the literal meaning may occasionally be overborne by other interpretative factors and criteria which, if powerful enough, may justify a departure from the literal meaning.: ***Bennion on Statutory Interpretation, 5th Edition at pp. 455-463 and 863-889.***

[58] As it embarked on a consideration of which (if any) of the opposing constructions of **section 4(c)** of the **Defence Act** conveys the true

Parliamentary intent, the Court also observed that it was not possible to determine the true meaning of the expression “*a Cadet Force*” as used in **section 4** unless the entire Act were read as a whole.

[59] The approach of construing the Act as a whole commended itself, inasmuch as the expression “*a Cadet Force*” was only found in **section 4** of the Act and had not been employed in any other sections. Furthermore, Counsel for the opposing parties both urged the Court to examine **Part XI** of the Act dealing with the “*Barbados Cadet Corps*” and to draw certain conclusions from the fact that that **Part XI** also made specific reference to the expressions “*Barbados Cadet Corps*” and “*Cadet Corps*”. [**Bennion on Statutory Interpretation, 5th Edition at pp. 1155-1157.**]

[60] The Court also adverted to the presumption that Parliament does not intend ‘absurd’ consequences to flow from the application of its Act as well as the presumption that Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable. **Bennion, 5th Edition at pp. 969-979.**

[61] With regard to Mr. Nicholls’ contention that in light of **sections 5, 6 and 7** of the Act, anything other than a literal interpretation of **section 4(c)** would have the absurd effect of making school-based cadets responsible, in effect, for the defence of Barbados, the Court considered such fears to be completely unfounded, having regard to **section 219** which regulates the circumstances in which the Cadet Corps or any part thereof may be called out for service in aid of the civil community and provides that this may only be done during a

public emergency and also expressly forbids cadets from being required to bear arms.

[62] While customary international law and some international treaties to which Barbados is party prohibit the deployment of child soldiers by any State or entity within a State, Mr. Nicholls' submissions to the effect that accepting the Respondents' position will place Barbados in breach of its international law obligations is completely baseless. The Act does not in any way equate the school-based cadets to soldiers and, indeed, specifically proscribes through *section 219* their deployment except in the limited instance provided by that section. In the Court's view therefore, the adoption of the purposive approach to interpretation suggested by Counsel for the Respondents cannot, in the Court's view, have the result of enlisting children to the ranks of a force constituted for the defense of Barbados contrary to public international law.

[63] The Court accepted that in determining the intention of Parliament, Courts also have the power, and indeed the duty, to consider such aspects of the legislative history of an enactment as may be necessary to enable its legal meaning to be ascertained. *Bennion, 5th Edition at p. 123.*

[64] Accordingly, in order to give effect to the true intention of the Legislature, the Court accepted that, in construing a provision in an Act, it is permissible for it to refer to the parliamentary materials created during the passage of that Act as an aid to statutory construction where, in the opinion of the Court, the provision is ambiguous or obscure or its literal meaning may lead to absurdity:

Pepper v. Hart [1993]1 All E.R. 42 HL per Lord Browne-Wilkinson at p. 69 para (e).

- [65] On the authority of the decision of the House of Lords in *Pepper v. Hart*, the Court found the parliamentary materials submitted by the Solicitor General, and adverted to at paragraphs [33] to [38] above, to be highly persuasive as to the true intention of Parliament in passing the *Defence Act*. The said parliamentary materials clearly demonstrate that the expression “*Cadet Force*” in the Act was and is intended by Parliament to refer to the expanded and reconfigured “*Barbados Cadet Corps*” to be established as envisaged under *Part XI* and to comprise of the two types of cadet companies expressly described in *section 215(a) and (b)* of the Act.
- [66] On the assumption that Parliament does not do anything in vain, the Court also accepted that, unless the contrary appeared, it is required: i) to give a meaning to every word in the Act, ii) to give the same meaning to the same word wherever this word may appear; and iii) to give different meanings to words that are different. *Bennion, 5th Edition at pp. 1157-1160*.
- [67] Adopting this approach, the Court observed that since the expression “*a Cadet Force*” in *section 4* of the Act is obviously different from the expressions “*the Barbados Cadet Corps*” and “*Cadet Corps*” found in *Part XI*, Parliament, *prima facie*, intended different meanings to be ascribed to all three expressions.
- [68] Turning firstly to the expression “*a Cadet Force*” in *section 4(c)* of the Act, the Court observed that the word “*Force*” was common to the description of two other “*Forces*” which, according to *section 4*,

would comprise or form part of the newly created Barbados Defence Force. These were the “*regular Force*” and the “*reserve Force*” respectively. [See *section 4(a) and (b)* of the *Defence Act*].

[69] Except for the expression “*regular Force*”, which is found in various provisions in *Parts I, II and III* of the Act, it was observed that the expressions “*reserve Force*” and “*Cadet Force*” did not appear anywhere else in the Act.

[70] While there was no definition for “*regular Force*”, the Solicitor General submitted, and it is a matter of common knowledge, that the Barbados Coast Guard mentioned in *Part X* of the Act currently forms part of the “*regular Force*” within the Barbados Defence Force. This fact is also clearly evident from the *White Paper on the Establishment of the Barbados Defence Force* which expressly stated that the Barbados Coast Guard was intended to be “*incorporated into the Barbados Defence Force as its naval arm.*” [See *pages 1 and 2 and the Explanatory Note 11 of Appendix 1 to Annex “A” of the White Paper on the Establishment of the Barbados Defence Force.*]

[71] In the case of the “*reserve Force*”, while the Act clearly identified the “*reserve Force*” as an arm of the Barbados Defence Force, the legislature specifically stipulated, as appears in *section 4(b)*, that that particular arm or “*Force*” of the Barbados Defence Force was to be known as the ‘*Barbados Defence Force Reserve*’.

[72] In its wisdom, Parliament also provided a definition of “*Reserve*” in *section 2* of the Act. As is evident from the definition, the expressions “*Reserve*” and “*Barbados Defence Force Reserve*” are intended to be used interchangeably in various sections of the Act to refer to “*the*

body of officers and soldiers established under paragraph (b) of section 4”.

[73] Returning to an examination of *section 4* of the Act, the Court observed that Parliament had provided no special definition of the word “*Force*” as used in *section 4*. It is therefore permissible for judicial notice to be taken of the ordinary meaning of words as given in a “well-known and authoritative dictionary”. [*Bennion, 5th Edition at pp. 1221-1223.*]

[74] Accordingly, the Court has accepted that the word “*Force*” is defined in the *8th Edition of the Concise Oxford Dictionary* in several contexts, the most relevant of which appears to be that at item 3(c) as follows:

“3(c) an organized body of people, esp. soldiers, police or workers.”

[75] Additional guidance as to the sense in which the word “*Force*” was intended in *section 4* is found from the definition of the word “*Reserve*” which clearly refers to “*the body of officers and soldiers established under paragraph (b) of section 4.*”

[76] In short, the Court is satisfied that in *section 4* of the Act Parliament intended the word “*Force*” to be interpreted as a broad descriptive reference to “*the organized body of persons*” falling within each of the 3 broad arms or “*Forces*” of the Barbados Defence Force set out in *sections 4(a), (b) and (c)* respectively.

[77] The Court is accordingly satisfied that the expression “*regular Force*” for purposes of those sections in *Parts I, II and III* where the

expression is employed must be construed as a broad descriptive reference to “*the body of officers and soldiers who form part of the regular Force.*”

[78] In similar vein, the Court is satisfied that the expression “*Cadet Force*” is to be properly construed, as a broad overarching descriptive reference to the organized body or “*Force*” comprised of the two distinct types of units which upon the commencement of the Act were to be collectively known as the ‘Barbados Cadet Corps’ and for which provision is expressly made in *section 215* of the Act.

[79] Interpreted in this way and consistent with the explanation given by the Right Honourable J.G.M. Adams in his Parliamentary speech as he described *Part XI* of the Bill, the Court is satisfied and holds that notwithstanding its longstanding historical origins as a school-based body of secondary school pupils, Parliament’s true intention is that the expression “Barbados Cadet Corps” in *Part XI* would, upon the commencement of the Act, thenceforth have an expanded meaning.

[80] More specifically, the Court is satisfied that it was Parliament’s true intention that following the commencement of the *Defence Act*, the hitherto well-known expressions “*Barbados Cadet Corps*” and “*Cadet Corps*” would no longer refer only to the school-based body of secondary school pupils formerly known by that name, but would instead constitute “*a Cadet Force*” within and under the auspices of the Barbados Defence Force. This “*Cadet Force*” was and is intended by Parliament to comprise not only the school companies of pupils of authorized secondary schools, but also of cadet companies of persons enrolled in the “*Barbados Cadet Corps*” with the approval of the

officers commanding the companies as provided by *section 215* of *Part XI* of the Act.

[81] In summary, the Court holds that the expression a “*Cadet Force*” in *section 4(c)* of the Act is to be construed as a broad overarching descriptive reference to “*the organized body comprised of (i) a unit of school-based companies of pupils of authorized secondary schools and (ii) a unit of independent companies of persons enrolled in the Barbados Cadet Corps in accordance with section 215 of Part XI of the Act.*”

[82] The Court is keenly aware that the obvious result of applying the literal interpretation that had been urged upon it by the Applicant was, on the one hand, to effectively leave the Barbados Cadet Corps as a separate entity completely outside of the Barbados Defence Force and not subject to its command and control, while the consequence of reading the expression ‘*Cadet Force*’ in *section 4(c)* either as synonymous with, or as merely descriptive of a reconfigured and expanded Barbados Cadet Corps will, as a matter of law, have the practical effect of attaching the Barbados Cadet Corps to the Barbados Defence Force as a Cadet Force subject to its command and control.

[83] Notwithstanding Mr. Nicholls’ submissions to the effect that anything other than a literal interpretation of *section 4(c)* would, having regard to *sections 5, 6 and 7* of the Act, render secondary school cadets responsible for the defence of Barbados or liable to be formed into units or other military bodies or to be deployed outside of Barbados, the Court is satisfied that the fears expressed by Counsel for the Applicant are unfounded and unlikely to arise in practice since the

body of secondary school pupils and other persons collectively comprised in the Cadet Force, and forming part of the Barbados Defence Force, is in reality governed by **Part XI** of the Act.

- [84] The provisions of **Part XI** of the Act expressly apply to and regulate the manner in which, *inter alia*, cadets are to be enrolled in the reconstituted Barbados Cadet Corps. In particular, **section 216(2)** envisages that persons desirous of enrolling in the Cadet Corps be given a notice in the prescribed form setting out the general conditions of enrolment and shall not be enrolled unless the commanding officer is satisfied that the notice is understood by the person desirous of being enrolled.
- [85] **Section 216(3)** further stipulates that the consent of a parent or guardian of a person desirous of being enrolled as a cadet is required before a person may be enrolled into the Cadet Corps. The manner in which the consent of the parent or guardian is to be given is also a matter requiring the preparation of a prescribed consent form.
- [86] **Part XI** also regulates the command structure of the 2 units comprising the reconfigured Barbados Cadet Corps. Most importantly, **Part XI** of the Act gives the Defence Board power to make regulations generally for the good management of the Cadet Corps and in particular, to regulate specific matters which Parliament in its wisdom regarded as necessary for the proper functioning of the Corps.
- [87] It is evident from **sections 218(c) and (f)** of **Part XI** that Parliament expressly intended regulations to be made for the introduction of a disciplinary code to be prepared by the Defence Board in collaboration

with the Ministry of Education and the various headteachers of the schools, and that a Cadet Advisory Committee be established with terms of reference and functions to be prescribed.

[88] *Section 218(g) and (j)* also expressly require the Defence Board to make regulations for the programme of training, projects and qualification tests to be undertaken by cadets and for the attendance of cadets at training and other parades.

[89] Finally, *section 219* very clearly provides that in the event of a public emergency, the Governor General may, on the advice of the Prime Minister, by proclamation, direct that the Cadet Corps or any part thereof be called out for service in aid of the civil community and specifically states that “...no cadet may be required to bear arms.”

[90] The Court is satisfied that, given the specific provisions in *Part XI* of the *Defence Act* pertaining to the administration of the Barbados Cadet Corps, the fact that the Barbados Cadet Corps is descriptively referred to in *section 4(c)* of the Act as a part of the Barbados Defence Force will not operate to make cadets of the Barbados Cadet Corps responsible for the defence of Barbados or liable to be formed into units or other military bodies or to be deployed outside of Barbados.

[91] The Court is also satisfied that the expression “*Cadet Force*” in *section 4(c)* of the Act, is not synonymous with the school-based Cadet companies which prior to the Act were collectively and exclusively known as the Barbados Cadet Corps. In summary, the Court accordingly holds that the expression “*Cadet Force*” was and is intended by Parliament as a reference to the expanded and reconfigured “Barbados Cadet Corps” regulated under *Part XI* of the

Act and comprised of the two types of cadet companies expressly described in *section 215(a)* and *(b)* of the Act.

[92] *Issue 2 - Is the Barbados Cadet Corps which is regulated under Part XI of the Defence Act, and described in section 215 of that Part, “a Cadet Force” for the purposes of section 4(c) and therefore, by law, a constituent arm of the Barbados Defence Force?* It should reasonably follow from the Court’s conclusions in relation to the first issue above that Parliament intended the reconstituted Barbados Cadet Corps described in *section 215* to be regulated under *Part XI* of the Act and that this reconstituted Barbados Cadet Corps, which includes the school-based cadet corps, is “*a Cadet Force*” for the purposes of *section 4(c)* of the Act. As this “*Cadet Force*” is established as a unit of the Barbados Defence Force under *section 4(c)*, the short answer to the second question posed is that pursuant to the *Defence Act*, the Barbados Cadet Corps is a constituent arm of the Barbados Defence Force.

[93] *Submissions for the Applicant:* Although the Barbados Cadet Corps is described as a unit of the Barbados Defence Force under *section 4(c)* of the Act, it is subsequently only mentioned in *Part XI* of the Act and it is also regulated under that part. Counsel for the Applicant, Mr. Nicholls, therefore submitted that the Barbados Cadet Corps was not a constituent part of the Barbados Defence Force but an entirely separate and distinct organization. In making this submission, counsel argued that under the *Defence Act*, the Cadet Corps had a distinctly different source of command from that of the Barbados Defence Force and that its command had been vested in entirely different officers.

[94] Mr. Nicholls drew the Court's attention to *section 9(1)* of the Act which established the Barbados Defence Board and provided that it was responsible for the command, discipline and administration of the Barbados Defence Force and all matters relating thereto and *section 9(2)* by which the Chief of State was granted responsibility for the "operational use of the Force" subject to the directions of the Governor-General and the Prime Minister and contrasted these sections to *sections 217 and 218* of the Act. Pursuant to *section 217*, the officers and non-commissioned officers of the Barbados Defence Force were given responsibility for the command and training of the units of the Barbados Cadet Corps while *section 218* provided that the Defence Board may make regulations with respect to matters necessary for its good management.

[95] Counsel for the Applicant submitted that while actual command of the Barbados Defence Force was vested in the Chief of Staff, the command of the Cadet Corps was clearly the responsibility of the officers and non-commissioned officers posted to those units and this, by necessary implication, excluded the Chief of Staff. He pointed out that *section 219* of the Act authorized the Governor-General to give commands to call out the Cadet Corps in the specific instance of a public emergency and argued that if the Cadet Corps was a component of the Barbados Defence Force, as the Applicant contended, it would not have been necessary for the Governor-General to do so as the Governor-General had the power to give directions to the Chief of Staff directly under *section 9(2)*.

[96] *Submissions for the Respondents*: On the other hand, Mr. Wayne Clarke as counsel for the Respondents reiterated that it was necessary to interpret the Act as a whole and a portion of the Act could not be considered and interpreted in isolation. He further submitted that the legislative intent of Parliament was readily apparent on examining **Part XI** in the context of the Act as a whole. It was his contention that the scheme, purpose and legislative intent of Parliament in drafting the **Defence Act** was not to establish the cadet corps as a separate institution from and autonomous to the Barbados Defence Force but rather to establish one military regime in the form of the Barbados Defence Force of which the cadet corps was intended to be but one branch.

[97] Counsel for the Respondents stressed that the statute read as a whole indicates that the Barbados Cadet Corps was never intended to function as a separate body and the provisions of the Act in no way established the existence of two separate military organizations. He pointed out that in a small island the size of Barbados it was not necessary to have two military organizations and that the Barbados Defence Board established by the Act was responsible for only one legal unit, that unit being the Defence Force of which the Barbados Cadet Corps was a part.

[98] In support of this submission, Mr. Clarke referred to the method by which the Cadet Corp was funded, calling attention to the fact that the Cadet Corps was not independently funded but was instead dependent on the Barbados Defence Force for its finances.

[99] In her written submissions to the Court, the Solicitor-General, Ms. Edwards, also submitted that the Barbados Cadet Force constituted part of the Barbados Defence Force. She drew attention to the *White Paper* and specifically Annex “A” thereto which sets out the organizational chart of the Barbados Defence Force. The Barbados Cadet Corps appears on the second level of this chart under the jurisdiction of the Defence Force Headquarters and on the same level as the Barbados Regiment, the Barbados Volunteer Reserve and the Barbados Coast Guard, other branches of the Barbados Defence Force established by the *Defence Act*.

[100] *Discussion*: The Court accepts, as it had pointed out in para [59] above, that in interpreting the *Defence Act*, it is necessary for it to construe this legislative enactment as a whole and not to examine specific sections in isolation from the remainder.

[101] The Court acknowledges the inclusion of specific provisions in *Part XI* of the *Defence Act* to govern the management of the Barbados Cadet Corps separately from other units of the Barbados Defence Force but accepts that this does not in any way preclude the Cadet Corps from being a constituent component of the Barbados Defence Force. The Court observes that the *Defence Act* also contains separate parts dealing with the other units of the Defence Force, namely the Barbados Coast Guard, the Barbados Defence Force Reserve and the Barbados Coast Guard respectively.

[102] The Court is also satisfied that it is clear from *section 4(c)* of the Act interpreted with the assistance of the parliamentary materials

pertaining to the *Defence Act* referred to at paragraphs [33] to [38] above that, in passing the Act, the Legislature intended the Barbados Cadet Force to be a component of the Barbados Defence Force.

[103] Had it been the intention of Parliament to establish the reconstituted Barbados Cadet Corps as a separate and distinct entity from the Barbados Defence Force, Parliament could have established the Cadet Corps by a separate Act rather than doing so under the *Defence Act*, an Act whose long title indicates that it is intended to provide for the establishment of the Barbados Defence Force and any related matters. Where, however, Parliament has dedicated an entire section of this *Defence Act*, to the management of the Barbados Cadet Corps it is quite clear, particularly in light of *section 4* and the interpretation accorded to *section 4(c)* by the Court, as well as the parliamentary material relating to this legislation, that the Barbados Cadet Corps is and was intended to be an arm of the Barbados Defence Force.

[104] The Court therefore holds that the Barbados Cadet Corps is not an independent entity but an arm of the Barbados Defence Force and, accordingly, comes under the jurisdiction of the Barbados Defence Force. The status of the Barbados Cadet Corps as a constituent element of the Barbados Defence Force is a conclusion necessarily flowing from the judicial interpretation given by the Court to the expression “*Cadet Force*” that appears in *section 4(c)* of the Act.

[105] **Issue 3- Is the Applicant (as Cadet Commandant of the Cadet Corps) required by the Defence Act or by the regulations made thereunder, to follow the ‘orders and directives’ of the 1st Respondent Chief of**

Staff in relation to the command and administration of the Barbados Cadet Corps? Having regard to the issues already determined, the Court must now consider the issue that lies at the crux of this application which is the legal nature of the relationship between the position of the Cadet Commandant of the Barbados Cadet Corps held by the Applicant and the office of the Chief of Staff of the Barbados Defence Force held by the 1st Respondent, specifically as it pertains to the command and administration of the Barbados Cadet Corps, which the Court has already concluded is a constituent arm of the Barbados Defence Force pursuant to the *Defence Act, Cap 159* of the Laws of Barbados.

[106] *Submissions for the Applicant:* With respect to the third issue before the Court, Counsel for the Applicant submitted that the extent of command only applied to officers and non-commissioned officers when posted in the Regular Force or Reserve Force of the Barbados Defence Force. He pointed out that officers of the Defence Force were routinely posted to other military institutions such as the Regional Security Services and Barbados Prison Service and during their periods of duty elsewhere, the Chief of Staff did not possess the authority to exercise command over them despite being the highest ranking officer of the Barbados Defence Force.

[107] It was the submission of Counsel for the Applicant that the Cadet Force, despite being described as a unit of the Barbados Defence Force under *section 4(c)* of the *Defence Act*, was to be regarded in the same manner as the Regional Security Services and the Barbados Prison Service. He argued that the Chief of Staff could not therefore

give commands to the officers or non-commissioned officers such as the Applicant who had been assigned to the Cadet Force during the duration of their assignment.

[108] Submissions for the Respondent: For his part, Counsel for the Respondents indicated that the Applicant had been recommended by the Chief of Staff to the post of Cadet Commandant and had been appointed to that post as a result of being an officer of the Barbados Defence Force. He could not have been appointed to or even considered for this position had he been a civilian.

[109] Mr. Clarke submitted that the 1st Respondent as a Colonel was superior in rank to the Applicant in the military chain of command and as the Applicant was subordinate to him, the Applicant was legally obliged to obey his orders and directions.

[110] Mr. Clarke further submitted that the Applicant had been granted a Queen's Commission from the Governor-General appointing him as an officer and the receipt of this commission made him subject to martial law and required him to obey his superior officer, placing him at the risk of being prosecuted under martial law, should he refuse to do so.

[111] Counsel for the Respondents argued that the Applicant was legally required to obey the provisions of the *Defence Act* and the lawful directions and instructions of the Chief of Staff. It was his submission that both the Cadet Corps and the Applicant as Commandant of the Cadet Force were answerable to the Barbados Defence Force and the

1st Respondent as the Chief of Staff of the Barbados Defence Force under the *Defence Act*.

[112] In her written submissions to the Court, the Solicitor-General agreed that it was the status of the Applicant as an officer in the reserve forces of the Barbados Defence Force that provided him with the qualifications necessary to be appointed as Commandant of the Cadet Corps. She contended that as an officer in the Reserve Force, the Chief of Staff could issue the Applicant with instructions and directions that had to be followed since the Commandant was a junior officer to the Chief of Staff in the Force and is on that basis subject to his instructions and directions.

[113] Ms. Edwards, the Solicitor-General, also submitted that in his position as the Commandant of the Cadet Corps the Applicant is also subject to the instructions and directions of the Chief of Staff as head of the Barbados Defence Force since the Chief of Staff is the person in whom operational command of the Barbados Defence Force is vested under the Act and the Barbados Defence Force includes the Barbados Cadet Corps. She argued that the Applicant as Commandant of the Cadet Corps was responsible for the command and training of the cadets pursuant to *section 217* of the Act and was answerable to the Chief of Staff for the performance of his duties.

[114] It was her submission that the Barbados Defence Board has ultimate responsibility for the command and administration of the Defence Force and the Chief of Staff was the link between the Defence Force (inclusive of the Cadet Corps) and the Defence Board and carried out the directions of the Board.

[115] *Discussion*: The Court is aware that the hierarchy or chain of command is the foundation of any military institution, including the Barbados Defence Force and its constituent units such as the Barbados Cadet Corps, and it also aware that the observance of the command hierarchy by the obedience of inferior officers to the orders and directives of superior officers is essential to the proper functioning of all military units and institutions.

[116] In determining the hierarchy of command to which the Barbados Cadet Corps is subject, the Court finds it useful to begin by taking judicial notice of the definition of command in the military context, which definition may be found in the *Dictionary of Military Terms* (2nd edition, 2003) where command is defined as follows:

“the authority vested in an individual member of the armed forces for the direction, co-ordination, control and administration of military forces.”

[117] The *US Department of Defence Dictionary of Military and Associated Terms* (12 April 2001 as amended through 31 October, 2009) also defines the same term in the following manner:

“The authority that a commander in the armed forces lawfully exercises over subordinates by virtue of rank or assignment.”

[118] Having regard to the foregoing definitions of military command and the nature of military command in general, as well as the submissions of the *amicus curiae*, Captain Brian Clarke, it appears to the Court that military command is legally derived from and exercised by virtue of the office or rank held by an individual officer in the force.

[119] The command authority vested in an officer is exercised when the officer is required to direct or control officers or members of the force of a lower rank. The order of precedence between ranks in the force assigns the priority of ranks, and determines therefore the legal relationship between all members of the force and whether the holder of a particular rank may issue orders to the holder of another.

[120] The Court has the benefit of the submissions of the *amicus curiae*, Captain Brian Clarke, who very usefully called the Court's attention to **section 168** of the *Defence Act* which provides that the officers and soldiers of the Defence Force shall stand in relation to each other in such order of precedence as prescribed by the Defence Board. Captain Clarke indicated that **section 168** had to be read in conjunction with the *Defence (Miscellaneous) Regulations, 1981* (hereinafter called "the Regulations") and specifically **section 2(1)** and **sections 8 and 9** of those Regulations.

[121] **Section 8(1)** states that an officer appointed to command a unit has, irrespective of seniority, command over all other officers serving in that unit, while **section 8(4)** provides that officers may exercise powers of command over junior officers and over all soldiers. **Section 9** is entitled "precedence of officers" and governs the military hierarchy of officers holding the same grade or rank.

[122] **Section 2(1)** of the *Regulations* provides that the ranks of officers of the Barbados Defence Force are set out in serials 5-20 of the first column of the *First Schedule* to the *Regulations*.

[123] Pursuant to **section 2(1)**, the *First Schedule* of the *Regulations* lists the various ranks of officers in the armed force in the order of

hierarchy and in the first column of this Schedule, the rank of Lieutenant-Colonel is listed directly below and is, accordingly, subordinate to that of the rank of Colonel.

[124] Captain Clarke also submitted that pursuant to **section 14(3)** of the **Defence Act** the Queen's Commission received by the Applicant and dated the June 1, 2007 and by which he was appointed to the post of Major took the form of that set out in the First Schedule to the Act and the Commission therefore provided as follows:

“You are therefore carefully and lawfully to discharge your duty as such an officer in the rank of Major or in such other rank as you are in such manner and on such occasions to exercise and well discipline in their duties such officers and soldiers as may be placed under your orders from time to time and use your best endeavours to keep them in good order and discipline. I do hereby command all such officers and soldiers to obey you as their superior officer, and you to observe and follow such orders and directions as from time to time you shall receive from me or any of your superior officers in pursuance of the trust hereby reposed in you.[Emphasis Added]”

[125] The Court is satisfied that it is clear from the **First Schedule** of the **Regulations** and the submissions of Capt. Brian Clarke, that the Applicant who was initially appointed as Major and then subsequently promoted to Lieutenant-Colonel was, at all times, inferior in rank to the 1st Respondent who held the post of Colonel.

[126] The Court considers that the Queen's Commission dated the 1st day of June, 2007 forms the legal basis by which the Applicant is appointed as an officer. The Court is also satisfied that as stipulated by the wording of the Commission by which the Applicant was appointed, the Applicant was required to obey any orders and directions he received from any superior officers, and was, accordingly, required to obey the orders and directions received by him from the 1st Respondent, who had been appointed as a Colonel and was therefore superior in rank to him.

[127] The Court therefore finds that as the Applicant holds the rank of Lieutenant Colonel while the 1st Respondent holds the substantive position of Colonel, the 1st Respondent possesses a higher rank than the Applicant and may therefore issue directions and orders to the Applicant, who by virtue of his lower rank is required to obey them.

[128] Capt. Clarke further submitted that under the Act, overall command of the Defence Force, including the Cadet Corps, was vested in the Chief of Staff pursuant to *section 169*. He indicated that the fact that the Governor-General could call out the cadet corps pursuant to *section 219* did not mean that the Chief of Staff had been deprived of his command of the Defence Force only that the absolute authority to command granted to him by the Defence Act had been somewhat whittled down by the same Act.

[129] The Court cannot accept the analogy between the Barbados Cadet Corps on the one hand, and the Regional Security Services and the Barbados Prison Services, on the other hand, which was offered by Counsel for the Applicant because unlike the Regional Security

Services and the Barbados Prison Service, the Barbados Cadet Corps was established by the Act establishing the Defence Force which Act, the Court also held, provided under *section 4* that the Cadet Corps was a unit of the Defence Force.

[130] The Act provides in *section 169* that the Governor-General shall vest command of the Barbados Defence Force in an officer who is also a member of the Barbados Defence Force. The officer appointed pursuant to *section 169* to have command of the Barbados Defence Force is, according to *section 2* of the Act, given the title of “*Chief of Staff*” and is also given the responsibility for the operational use of the Force under *section 9(2)* of the Act.

[131] *Section 217* of the Act further provides that the command and training of the units of the Barbados Cadet Corps is the responsibility of the officers and non-commissioned officers who are posted and attached to the Cadet Corps.

[132] Given *section 217* of the Act, it is clear that the Act contemplates the Cadet Commandant having command authority over the officers and non-commissioned officers posted and attached to the Barbados Cadet Corps.

[133] The Court does not, however, accept that by granting authority over the Barbados Cadet Corps as a specific unit of the Barbados Defence Force to the Cadet Commandant under *section 217*, the Act places the Barbados Cadet Corps, and therefore the Cadet Commandant, outside the scope of the authority of the Barbados Defence Force and the Chief of Staff as the person in whom command of the Barbados Defence Force is vested.

[134] The Court accepts that it is legitimate for the Court to make findings as to the proper implications flowing from the express provisions of a statute where the provisions are insufficiently imprecise to determine the point in issue: *Bennion pp 424-429*.

[135] However, the interpretation of the Act which has been urged upon the Court by Counsel for the Applicant is neither supported by the express language of the Act and neither can it be logically or reasonably implied by its provisions.

[136] Recalling that the Court's duty in interpreting an Act is to determine the intent of Parliament, the Court notes that the Parliament in its enactment of the *Defence Act* intended the Barbados Defence Force to possess different levels of command.

[137] This is clearly evident from *White Paper on the Establishment of the Barbados Defence Force* which indicates in paragraph 4 of Appendix 1 to Annex A that the requirements of the Defence Force has made the use of three levels of command unavoidable, with those three levels being company or sub-unit level, battalion or unit level and force level, and further provides in paragraph 5 that the general Headquarters of the Force will be "*the link between the units and the Government*".

[138] The Court is therefore satisfied that as a unit of the Barbados Defence Force, the Barbados Cadet Force, like all other units of the Force, falls under the ultimate authority of the Barbados Defence Force and the Cadet Commandant as head of the Barbados Cadet Corps is thus subject to the authority of the Chief of Staff as head of the Barbados Defence Force.

[139] Based on the foregoing, the Court therefore holds that the Applicant who holds the rank of Lieutenant-Colonel and the post of Cadet Commandant is required to follow the orders and directives of the 1st Respondent as his superior officer in the Force and as the Chief of Staff or person in operational command of the Barbados Defence Force of which the Barbados Cadet Corps is a part.

[140] **Disposal:** In the result, the relief sought in the Applicant's Originating Motion filed on August 20th, 2008 is refused.

[141] It is expressly declared that the expression "Cadet Force" as used in section 4(c) of the *Defence Act, Cap. 159* is intended by Parliament as a reference to the expanded and reconfigured "Barbados Cadet Corps" regulated in *Part XI* of the Act and comprising the two types of cadet companies described in section 215(a) and (b) of the Act.

[142] It is also specifically declared that the expanded and reconfigured "Barbados Cadet Corps" which is regulated by *Part XI* of the Act and described in section 215, is a "Cadet Force" for purposes of section 4(c) and is accordingly, by law, a constituent arm of the Barbados Defence Force.

[143] It is further expressly declared that the Applicant as the Cadet Commander of the Barbados Cadet Corps and the holder of a rank which is inferior to the rank of Colonel held by the 1st Respondent, is subject to the orders and directives of the 1st Respondent in his capacity as his superior commanding officer and the Chief of Staff of the Barbados Defence Force of which the Barbados Cadet Corps forms part.

[144] The interlocutory orders and injunctions issued on the 10th September, 2008 and 30th December, 2010 respectively are hereby discharged

**Maureen Crane-Scott
Judge of the High Court**