

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
CIVIL DIVISION**

**No 2244 of 2012**

**IN THE MATTER OF THE  
ADMINISTRATIVE JUSTICE ACT  
CAP 109B**

**-AND-**

**IN THE MATTER OF THE PUBLIC  
SERVICE ACT 2007-41**

**-AND-**

**IN THE MATTER OF THE GENERAL  
ORDERS FOR THE PUBLIC SERVICE  
OF BARBADOS 1970 (REVISED) 1997)**

**-AND-**

**IN THE MATTER OF AN  
APPLICATION FOR JUDICIAL  
REVIEW**

**BETWEEN**

**BERTNUL RICARDO HARRISON  
NEVILLE CORBIN  
KIM RAMSAY-MOORE  
MARVIN BRATHWAITE**

**1<sup>ST</sup> CLAIMANT  
2<sup>ND</sup> CLAIMANT  
3<sup>RD</sup> CLAIMANT  
4<sup>TH</sup> CLAIMANT**

**-AND-**

**PERMANENT SECRETARY-  
DIVISION OF ENERGY &  
TELECOMMUNICATIONS  
PERMANENT SECRETARY-**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**OFFICE OF THE ATTORNEY-GENERAL  
PERMANENT SECRETARY-  
PRIME MINISTER'S OFFICE  
PERMANENT SECRETARY-  
MINISTRY OF FOREIGN AFFAIRS  
PERMANENT SECRETARY-  
TRAINING ADMINISTRATION  
DIVISION  
PERMANENT SECRETARY  
MINISTRY OF THE CIVIL SERVICE**

**3<sup>RD</sup> DEFENDANT**

**4<sup>TH</sup> DEFENDANT**

**5<sup>TH</sup> DEFENDANT**

**6<sup>TH</sup> DEFENDANT**

**Before the Honourable Madam Justice Jacqueline A.R. Cornelius, Judge of  
the High Court**

**2014: November 13;**

**Mr. R.E. Guyson Mayers for the Claimants**

**Mr. Wayne A. Clarke for the Defendants**

## **DECISION**

### **Introduction**

[1] In this matter, the claimants, who are all employees of the Crown, seek Judicial Review of a decision to grant each of them study leave without pay to pursue the Legal Education Certificate (LEC) at the Hugh Wooding Law School (HWLS) in Trinidad. All of the claimants have actually completed their LEC.

[2] The defendants are all offices of the Crown held by those persons who have administrative control over their respective Ministries/ Departments.

### **THE INSTANT ACTION**

[3] The claimants seek the following relief

- (a) A declaration that the refusal of the fifth defendant to adhere to the well-established practice of granting study leave with pay to public officers who are students pursuing the LEC is contrary to law, an abuse of power, an unreasonable or irregular or improper exercise

of discretion, a denial of the claimants' reasonable and legitimate expectations and *ultra vires*;

- (b) An injunction to prohibit the fifth defendant from keeping in force its adverse decision with respect to the Claimant and to require it to alter its order and grant the claimants paid leave;
- (c) An order of *certiorari* to quash the decision not to grant paid leave to the claimants
- (d) An order of *mandamus* to command the defendants to reverse their decision and grant the claimants half-pay for the duration of their two years of study in satisfaction of the requirements of the LEC;
- (e) Damages; and
- (f) Further and other relief.

[4] The grounds upon which the relief is sought are that the act and/or omission of the defendants in determining not to grant the claimants paid leave was

- (a) Unauthorized or contrary to law;
- (b) An excess of jurisdiction;
- (c) Failure to satisfy or observe conditions or procedures required by law;
- (d) An unreasonable or irregular or improper exercise of discretion;
- (e) An abuse of power;
- (f) A denial of legitimate expectation; and
- (g) A breach of or omission to perform a duty.

[5] In their application statement, the claimants jointly submitted that they have all successfully completed their course of study for the Bachelor of Laws (LLB) degree at the Cave Hill Campus of the University of the West Indies (Cave Hill) and were all assigned places at the HWLS to pursue the LEC which is a requirement for admission to practice in the legal profession.

[6] Before enrolling at the HWLS, at least one of the claimants made enquiries and was assured by a training department officer that they would receive at least half-pay during the Trinidad stage of the program. This information was shared amongst all the claimants and they all deponed that they acted in reliance on the word and ostensible authority of the officer.

[7] The claimants stated that they are well aware of an established practice that officers proceeding to Trinidad to pursue the LEC were granted at least half-pay during this stage of their program, and legitimately expected that they too would benefit from this practice. Plans were made based on this knowledge. They contend further that the fifth defendant lumped them together as a group and did not give each case individual attention as was required to be done in the proper performance of duties. This conduct, they allege was neglectful, a departure from standard terms and conditions and procedures and a failure to perform a duty. The acts or omissions of the defendants had plunged them into severe hardship and threatened to cause them to abort this vital aspect of their studies which would undoubtedly harm their career development.

#### **CLAIMANT'S AFFIDAVIT EVIDENCE**

[8] There is a common theme amongst the claimants' affidavits.

[9] The claimants all entered the Cave Hill Campus in September 2009 to pursue the LLB program. They each deposed to the importance of legal studies to the advancement of their careers. In the latter part of July and the earlier part of August 2012, all of the claimants were separately informed that they would be granted study leave without pay for the duration of their studies in Trinidad.

[10] Each of the claimants requested a review of the decision on the grounds that the Training Committee failed to consider their cases individually and made a blanket decision which amounted to a fettering of their discretion. In their individual letters, each claimant cited, *inter alia*, the level of investment made to date and financial hardship as factors which in their view should have been considered. As a group, they wrote to the Prime Minister outlining their concerns. He referred them to the Head of the Civil Service who in turn referred them to the fifth defendant. They met with the fifth defendant on 10<sup>th</sup> September 2012. They stated that the fifth defendant indicated that she was instructed to meet with them and they were all given the opportunity to outline their cases. They each deposed to the fifth defendant informing them that the Government had no money and that their letters for review would be considered via 'round robin'.

[11] They believed that the fifth defendant, her officers and the Training Committee were obliged to examine each case on its merits and failing to do

so was a breach of or omission to perform a duty and a failure to satisfy or observe conditions or procedures required by law. The conclusion reached was therefore *ultra vires* and void.

**Affidavit of Bertnul Ricardo Harrison**

- [12] Mr. Harrison, the first claimant, joined the public service in 1980. He was a senior officer holding the position of Administrative Officer 1 in the Division of Energy and Telecommunications. He deposed that administrative principles of law were a standard part of the decisions taken and duties carried out by him on a daily basis and would be enhanced by legal training and qualification. Additionally although the LEC was regarded as preparation for practice at the bar, there were important principles of law that were taught which would enhance his understanding of the law in a manner that would improve his ability to carry out his daily duties. Given that as a public servant he was subject to transfer to other departments, his improved knowledge would be useful for the development of Barbados.
- [13] Prior to enrolling, he informed the third claimant who made enquires and was ensured by an officer of the fifth defendant that students moving on to the LEC stage of their training would receive at least half-pay during that stage. He regarded this communication as the word and position of the fifth defendant, whether that authority was actual or ostensible.
- [14] Mr. Harrison then stated the names of approximately thirty public officers (primarily police officers) who benefitted from at least half-pay when pursuing their LEC in support of his contention that proceeding to the LEC on at least half-pay was an established practice. Based on this information he reasonably and legitimately expected that he would benefit from the practice. He stated that he acted to his detriment in reliance on these facts and proceeded with enrollment at HWLS.
- [15] He was therefore surprised and dismayed that he would not be granted paid leave especially since he was aware that there were persons currently enrolled at HWLS who were also serving public servants that had been granted leave with pay.
- [16] When he applied for leave the first defendant recommended him as suitable for the course of study and stated that the area was important to his department. On being denied paid leave, he sought to have the decision

reviewed and wrote to the fifth defendant by letter dated 31<sup>st</sup> July 2012 outlining the hardship that 'no-pay' leave would cause him.

- [17] By letter dated 21<sup>st</sup> August 2012, the claimants wrote a joint letter to the Prime Minister explaining their plight and pointing out that for more than 30 years, no group of Government employees pursuing the LEC had been given no-pay leave. In his view, this was long enough to establish a practice of paid leave.
- [18] Mr. Harrison submitted that if it was the intention of the sixth defendant to fracture an existing policy which was a long standing precedent, adequate notice should have been given to those persons who were likely to suffer as a result of that decision. The last minute notice given to him mere days before departure to law school after he had made firm financial commitments was an unreasonable and irrational exercise of discretion and abuse of power.
- [19] He submitted that he deserved to receive paid study leave but no individual attention was paid to his separate case. No individual attention had been paid to their differing circumstances. They were all summoned to a meeting with the fifth defendant and were told that she was instructed to speak to them.
- [20] The decisions, actions or omissions of the defendants had wrongfully placed him in an untenable position and if the decision were allowed to stand, he would lose thousands of dollars which he already invested in facilitating his education and living expenses.

**Affidavit of Kim Ransay-Moore**

- [21] Mrs. Moore is an Information Officer with the Government Information Service. Prior to commencing her studies, she contacted the office of the fifth defendant by telephone and spoke to an officer who identified herself as Beulah Scantlebury. Mrs. Moore deposed that she was advised by Ms. Scantlebury that leave would be granted to public officers regardless of where they worked and that the practice at the time was for public officers to be given leave with half-pay to complete the LEC even though ultimately up to the decision of the Training Committee.
- [22] Whilst pursuing her LLB, she turned to the office of the fifth defendant for advice when she realized she needed more time for her second and third years. She stated that Ms. Scantlebury told her that leave without pay was granted for the first two years of study and for the final year, leave with half-

pay was granted. When she enquired as to whether this would affect her leave to pursue the LEC, she was told that the LEC leave was unaffected as it was treated as an extension of the LLB and would be granted with half-pay.

- [23] At a subsequent meeting at the offices of the fifth defendant, with Ms. Scantlebury and a Mr. Broomes who she believed was the Deputy Permanent Secretary at the time, she was informed that whilst Government had the discretion, officers were usually granted leave with half-pay and she should make plans with that in mind. She applied for leave between January and February 2012 to pursue the LEC

**Affidavit of Marvin Brathwaite**

- [24] Mr. Brathwaite is a Foreign Service Officer in the Ministry of Foreign Affairs and was so employed from 2010. Prior to that he spent some 15 years in the Royal Barbados Police Force (RBPF) including some six years in the Criminal Investigation Department. In the final year of his LLB he was granted 2 months 'no-pay' leave and 7 months half-pay leave.
- [25] In 2012, he applied for the LEC and believed that he would be entitled to at least half-pay leave as was traditionally given to similarly situated officers who pursued the same course of study. He applied for study leave in February of 2012 as required. In June 2012, he was assigned to work in the Human Rights and Multilateral Relations Division whose remit included, *inter alia*, review, identification and examination of Barbados' treaty obligations and liaising with the Office of the Attorney-General on legal matters.
- [26] Mr. Brathwaite believed that his application for paid leave should be viewed favourably due to his present duties, previous duties, his work record, the relevance of his study to the Fourth Defendant and to the wider Government Service. He was of the view that an objective panel would grant him study leave with pay and that the decision was so unfair, that it amounted to an abuse of power. He had a legitimate expectation to be granted leave with pay. He had already secured accommodation, which needed to be reserved early, based on the legitimate expectation that he would be granted paid leave.

[27] In his view, the decision of the Training Committee, the timing of the decision and failure to acknowledge correspondence were disheartening and discouraging and an unreasonable exercise of discretion.

**Affidavit of Neville Corbin**

[28] Mr. Corbin is a member of the Royal Barbados Police Force (RBPF) and held the rank of Sargeant. He stated that when he commenced his LLB in 2009, he did so with the knowledge that all of the Commissioners of Police since Mr. Orville Durant and a number of Senior officers were all Attorneys-at-Law. He realized that it was critical to his development as a police officer to pursue studies in law noting especially that a lot of the senior officers were 'moving on in age' and would soon retire. It was essential that persons with sound legal training were in place to fill the breach caused by their departure and he therefore decided to read for a degree in law. Further, a degree in law without the LEC left one's legal training incomplete. This was why legally trained persons who were moving to the top of the force did not stop their training with only the LLB.

[29] Mr. Corbin stated that during his studies he gave up applying for extra duties during the three semesters of the three years of study and that he worked weekends and nights. He believed that the decision to give him no-pay leave was made as part of a public service wide policy with respect to all persons studying law without the persons who were responsible for the decision applying their mind to his specific application. Persons in the RBPF pursuing studies in all other areas were granted leave with full pay or half-pay (Mr. Corbin drew attention to a memorandum [exhibit NC2] dated 9<sup>th</sup> July 2012 in which the leave status of members of the force was addressed; the memorandum showed 2 other officers being granted leave with half-pay, 2 other officers being granted leave with full pay and Mr. Corbin being granted leave with no-pay. 3 of the other four officers pursued courses in music and the fourth officer pursued a course in visual arts whilst Mr. Corbin was the only person pursuing a course in law.)

[30] Mr. Corbin stated that despite the assertion that the Government had no money, there had been an increase in National Development Scholarships. The decision to grant him no-pay leave to pursue the LEC was a measure to prevent public servants from studying law and leaving the public service,

and to punish public servants who studied and did not put back in the time spent away from work.

### **DEFENDANT'S AFFIDAVIT EVIDENCE**

- [31] The defendants' evidence was wholly given by Antoinette A. Williams, Permanent Secretary Training Administration Division (TAD). She held the post for two years prior (affidavit filed 24 June 2013) and she responded to each of the claimants affidavits separately.

#### **Reply to First Claimant**

- [32] Ms. Williams noted that the third claimant was granted no-pay study leave for the period 28<sup>th</sup> March 2011 to 15<sup>th</sup> May 2011 and half-pay leave for the period 1<sup>st</sup> October 2011 to 31<sup>st</sup> December 2011 and 1<sup>st</sup> March 2012 to complete the LLB at Cave Hill. The Fourth claimant was granted no-pay study leave from 1<sup>st</sup> October 2011 to 30<sup>th</sup> November 2011 and half-pay study leave from 1<sup>st</sup> December 2011 to 31<sup>st</sup> May 2012 to complete the LLB program.

- [33] The purpose of the Training Administration Division was to process applications in the specified format for training and study leave from all public officers. This function was facilitated by the Senior Executive Officer. Applications were submitted by the respective Ministries and/ or agencies of Government to the TAD. Whilst individual Ministries and/or Agencies submitted applications on behalf of their officers, those respective entities, in the final analysis, did not make a determination as to whether or not a public officer was granted study leave with or without pay. When applications were received, they were coordinated by the Senior Executive Officer and submitted to the Training Committee for consideration and recommendation.

- [34] The claimants submitted their applications in the following order
- (a) First Claimant Mr. Bertnol Harrison 8<sup>th</sup> March 2012;
  - (b) Second Claimant Mr. Neville Corbin 16<sup>th</sup> March 2012;
  - (c) Third Claimant Mrs. Kim Ransay-Moore 1<sup>st</sup> February 2012;
  - (d) Fourth Claimant Mr. Marvin Brathwaite 17<sup>th</sup> February 2012;

All of the applications submitted by the respective Ministries and/or Agencies were not furnished with a high priority rating or status. In each application, the applicants (the claimants), on their own recognizance, specifically deposed that they were financing their own studies personally.

- [35] To the best of her knowledge, Ms. Beulah Scantlebury, the Senior Executive Officer engaged the third and fourth claimants as a result of their enquiries. They were never given the assurance that they would receive half-pay during the Trinidad phase of their program but rather were instructed that whilst the practice had been to grant public officers leave with pay to pursue the LEC, it was advisable that they await the decision of the Public Service Commission. By his own admission the fourth claimant readily admitted that he secured accommodation in January 2012, *prior* to his application of February 2012.
- [36] Ms. Williams then submitted a listing (Exhibit AAW1) showing a number of public officers who did not have the benefit of half-pay leave to show that there was an inconsistency over the years. The claimant acted on his own volition and enrollment at HWLS represented a natural progression of academic achievement. It was independent of study leave with or without pay.
- [37] Ms. Williams pointed out that Mr. Harrison's department had a Chief Legal Officer and alternatively, administrative staff members like the first claimant were expected to understand the requirements of legislation whether or not they had attended law school.
- [38] The Training Committee in making its recommendations of study leave without pay took into account relevant considerations together with the prevailing financial position of the Government. To that end all of the applicants were granted in the first instance study leave with the conditions of no-pay. It was erroneous to depose that no group of Government employees pursuing the LEC had been given no-pay leave before. Whilst persons may have benefitted from the practice, it was erroneous to suggest that it formed a firm policy, in fact over the years there had been instances where public officers had not so benefitted.
- [39] The Training Committee had a clearly defined discretion as it related to study leave with or without pay and in the instant case it exercised that discretion reasonably and legitimately in the absence of irrelevant considerations. The receipt of paid study leave to complete the LEC at HWLS could not be viewed as an enshrined right.
- [40] Ms. Williams further deposed that the Claimants were invited to a meeting in the TAD's conference room on 10<sup>th</sup> September 2012 with Mrs. Faye-

Marie Brown, Deputy Principal Training Officer. During the course of the meeting each claimant spoke and even though their positions differed meritoriously, there was one collective thread amongst the claimants. Their main grievance centered around whether or not they had been informed by the Senior Executive Officer, Ms. Beulah Scantlebury that they would receive half-pay leave to pursue the LEC.

- [41] The claimants queried why they were being selected for such treatment since public officers before had received leave with pay. They were informed that there were 7 applications and all persons were granted leave without pay. It was further explained that they were not being penalized but that the Committee, taking all the criteria into consideration as outlined in the Guidelines for the Award of Training and Study Leave, the comments of their Head of Ministries/Department and the prevailing financial circumstances had agreed to recommend no-pay study leave. It was incorrect to depose that no individual attention was paid to their different circumstances; each individual case was looked at on its merit and the same related to the different departments and the prevailing fiscal plight. There was no breach of or omission of duty; no failure to satisfy or observe conditions or procedures required by law; thus rendering the determination to grant study leave with no-pay *ultra vires* and or void.
- [42] It had to be noted that the Permanent Secretary, Training Administration Division (the fifth defendant) was not the final arbiter in the determination of study leave with pay; rather the permanent secretary was one of six Permanent Secretaries together with the Head of the Civil Service who comprised the Training Committee as established by law.
- [43] When Ms. Williams met with the claimants, she believed the matter could be settled amicably and suggested it be placed before the Training Committee by 'round-robin'. The claimants' letter, sent by their Attorney and dated 4<sup>th</sup> September 2012, was received the next day, 11<sup>th</sup> September 2012 and she was therefore forced to abandon the promise to circulate review by 'round robin' given the legal implications of the correspondence. As a consequence, it was recognized that the full Training Committee needed to meet to do a determined review.

[44] On 2<sup>nd</sup> October 2012, the full Training Committee met and agreed that its previous decision to recommend the approval of study leave without pay to pursue the LEC should remain in effect.

**Reply to Second Claimant**

[45] Ms. Williams' reply to the second defendant was similar to her reply to the first claimant save that she pointed out that in the exhibit referred to by Mr. Corbin (NC2) it also stated "it should be noted that the public service Training Committee may consider other pertinent information and/or special circumstances which would guide its deliberations and ultimate recommendations".

**Reply to Third Claimant**

[46] Ms. Williams denied that there was a suggestion that the LEC was for the benefit of the claimants. There was no decision to withhold the grant of study leave. Any suggestions as to persons leaving the Government Service, whilst not admitted, was an uncontroverted fact but never featured as a consideration during their deliberations. The concept of being punished was therefore unwarranted. The decision was not personal.

**Reply to Fourth Claimant**

[47] Mr. Brathwaite's application was supported by the Ministry of Foreign Affairs and Foreign Trade. It was not given high priority status. The Training Committee therefore took the level of support into consideration together with the prevailing financial position of Barbados.

[48] After Mr. Brathwaite received word of the decision, a review was requested, on his behalf by Mrs. Juliette Babb-Riley, Senior Foreign Officer. She was informed that Mr. Brathwaite would have to request a review himself and that was done.

**ISSUES & DISCUSSION**

[49] This application was by written submissions only. No cross-examination of the parties was done. The claimants allege that they have a substantive legitimate expectation of paid leave based on that fact that it had been "more usual than not" for persons in the position of the claimants to receive paid leave to complete their legal qualifications at HWLS. The defendants, rather peculiarly, admit that the

"claimants had no legally enforceable right to study leave with pay but by virtue of the practice they had a reasonable expectation that they would be granted leave in the first instance and secondly that leave would be attended with pay. The expectation derived from the representation implied from regular and established practice based upon the past actions of the adjudications of applications and subsequent grant..." (written submissions of the Defendants, page 33).

But he goes on:

"What are the operating conditions under which the authorities were required, before effecting unpaid leave? De facto, to afford the Claimants an opportunity to comment on the proposed change and providing the reasons for it where there has been no previous promise or practice of notice or consultation. This must be understood in light of the fact that no assurance either on consultation (the paradigm case of procedural expectation) was established or legally required."

[50] This is somewhat confusing, but as I understand counsel's argument he is saying one, both or either of two things, first, that there was a legitimate expectation to at least half-pay leave, but that the policy changed, and as there was no promise of consultation, although there was an opportunity given for the defendants to be heard, before that change, the actions of the defendant cannot be impugned. On the other hand he may be saying that there was no substantive legitimate expectation, as no policy had been established. Whatever the confusion in the mind of the counsel for the defendants, the witness for the defendants, Ms. Williams had more clarity. Her evidence was that there was no consistent and clear policy with respect to the grant of study leave with pay, going so far as to establish (which was not denied) that there were persons in a list of at least 21 other public servants between 1997 and 2011 who had not benefitted by the alleged policy. So to my mind, it must be the case for the defendants on the evidence presented by them that no policy or promise, and therefore no legitimate expectation existed. The issue to be determined therefore, is whether the claimant had a substantive legitimate expectation to study leave with at least half-pay leave.

**The Parameters of Substantive Legitimate Expectation:**

- [51] Many writers and courts in the Commonwealth Caribbean have established that substantive legitimate expectation recognises a claim by an applicant to an actual benefit and that a public authority is bound by a promise or cannot change entrenched policy. In this protection of the applicant's "non-right" the courts actually do intervene in the decision making process, by directing the public authority to give effect to the promise or representation made to a person or direct them to continue an old policy in the face of their attempt to introduce a new one.
- [52] What then are the parameters of this protection? As **Professor Eddy Ventose** queries in his book '*Commonwealth Caribbean Administrative Law*' (2013) **Routledge at page 210**
- "In what circumstances is a public authority bound by a promise, made to a person, of a substantive benefit? What test should the courts apply in determining whether to allow the legitimate expectation to trump the actions of the public authority? The standard is a high one for the claimant."
- [53] First of all, it is clear, that as mentioned above, the correct public authority must be identified. Secondly, there must be cogent evidence as to what the public authority, whether by practice or promise committed itself to. The policy or promise must be clear, unambiguous and unqualified. Thirdly, the claimant must establish whether the authority has acted or proposes to act unlawfully in relation to that commitment. Finally the court must decide what to do. In *Chang v Minister of Health* TT 2009 HC 309, the Court citing *R v Northern London Borough Council, ex p Bibi* [2001] EWCA Civ. 607 (per **Schieman LJ** recognised the last three issues as the three practical concerns arising in legitimate expectation cases.
- [54] The answer is found in a line of cases from the United Kingdom (UK), but clearly set out in easily set out in *Leacock (Pearson) v Attorney General per Simmons CJ*, cited with approval by the CCJ in *Joseph v Boyce v Attorney General of Barbados* [2006] 69 WIR 104 at 118:
- "In matters such as these (*whether to give effect to substantive legitimate expectations*) the Court must carry out a balancing exercise. The court must weigh the competing interests of the individual, who

has placed his legitimate trust in the State consistently to adhere to its declared policy, and that of the public authority, which seeks to pursue its policy objectives through some new measure. The court must make an assessment of how to strike the balance or be prepared to review the fairness of any such assessment if it had been made previously by the public authority."

[55] With these principles in mind I turn now to their application to the case before me.

**First of all, has the correct public authority been identified?**

[56] That is, is the person who allegedly made the promise or policy, if such a promise or policy was indeed made, the person who is sued? If a policy or promise is alleged, does the defendant have the actual or ostensible authority to make the promise? Clearly, any defendant must either have made the promise or must have been speaking on behalf of a public authority who has the capacity to bring that promise or policy about when they made the promise.

[57] Who is alleged to have made the promise in this case? The claimants have sued the Permanent Secretaries in this matter and I had such grave doubts about the correctness of this that I asked counsel for the defendant to specifically address the matter. He admitted to having no such doubts, but I am constrained to examine whether the defendants are the proper parties to this matter.

[58] The affidavit for Ms. Williams depones, as mentioned above that the Training Administration Division processes applications for training and study leave from all public officers. Applications are submitted to the Training Administration Division who submits them to the Training Committee for consideration and recommendation (Affidavit of 21<sup>st</sup> June 2013). Individual Ministries or agencies submit applications on behalf of their respective officers, but they themselves do not make any decision as to whether the leave would be with pay or not. Each Ministry had duly submitted the respective applications on behalf of each of the claimants. None of the affidavits allege any decision or action of the first to fourth defendants at all, although they all speak to writing to the fifth defendant for a "review" and meeting with her.

[59] All the defendants refer to the statements of Ms. Scantlebury. They argue that the seniority and responsibility of Ms. Scantlebury gave tremendous weight to her advice and hers was the word that any student would be expected to rely on. While Mrs. Moore, they submitted, did not deny that she was told that the ultimate authority rested with ‘Government’; it was clear however that she was assured there was an established practice and under that practice she was entitled to half-pay leave to complete her studies at HWLS.

[60] Section 24 of the *Public Service Act Cap 29* provides as follows:

“(1) There is hereby established a Training Committee that shall advise the Minister on training requirements an study leave in the Public Service

(2) The Training Committee shall

(a) advise the Service Commissions in respect of officers to be granted training and study leave; and

(b) determine the terms and conditions under which officers shall be granted training and study leave.

(3) The composition and procedure of the Training Committee are set out in the fifth schedule.”

[61] The fifth schedule of the Act provides as follows:

1. (1) The Training Committee shall consist of the following:

(a) The Head of the Public Service

(b) Permanent Secretary, Ministry of the Civil Service

(c) Permanent Secretary responsible for Training or the Principal Training Officer;

(d) Chief Personnel Officer;

(e) Permanent Secretary Ministry of Finance; and

(f) Permanent Secretary with responsibility for International Donor or Development agencies;

(g) Permanent Secretary, Ministry of Education.

(2) The Head of the Public Service shall be the chairman of the Committee and may at any time summon a meeting of the Committee

(3) Four members of the Committee shall form a quorum, and, subject to this Act and the Regulations, the Committee may regulate its procedure.

2. ...

[62] This Act makes it clear that if a party is aggrieved by any decisions with respect to the terms and conditions of study leave, one relevant party against whom any proceedings should be commenced would be the party whose responsibility is it is to make determinations on such applications. The Training Committee is charged under section 24 as the body who not only advises as to who should be granted stud leave but also under what conditions. In this case, the Training Committee made the decision and should be a party. While it is conceivable that the Permanent Secretary can also be a party in these kinds of matters, for example where that person refuses to submit an application or refuses to make the recommendation, in this case the defendants are not alleged to have made any decision, and the fifth and sixth defendants together with others are all part of the Training Committee.

[63] This court has grave doubts about the appropriateness of suing only the Permanent Secretary and holds that the Permanent Secretaries alone are not the correct parties to this action. However, given the fact that counsel for the defendants did not take this point, I would not as I otherwise would, dismiss the matter out of hand; but, go on to consider the substantive public law arguments raised before me.

[64] With regard to the statement of Ms. Scantlebury however, something needs to be said. The Claimants seem to be alleging that their expectation hinges not only on the fact of this "well known policy" but also on their reliance on the statement of Ms. Scantlebury that "students who would be moving on to the Legal Education Certificate stage of our training would receive at least half pay..." (affidavit of Neville Corbin). Yet Ms. Kim Ramsey-Moore, the person who it is accepted spoke to Ms. Scantlebury makes no such claim. In her affidavit she states that Ms. Scantlebury, an officer of the Training

Administration Department, told her that "...the practice for the Division was that Public Officers were given leave with half pay to complete the LEC *even though ultimately the decision was up to the Training Division.*" (emphasis mine).

- [65] Apart from the fact that Ms. Scantlebury was not the decision maker, it has not been shown to the satisfaction of this court that she had the ostensible or actual authority to make such a statement. Furthermore, this statement cannot be considered to be a promise at all. To the mind of the court it is an opinion, couched in the most conditional of terms, as to the possible result of an application. Thus, it cannot be said that there was any clear, unambiguous and consistent policy, or promise identified by her statement on which the claimants could rely.

**To what has the public authority committed itself?**

- [66] Since the promise or policy has not emanated from Ms. Scantlebury, where is the clear, unambiguous, consistent policy or promise which grounds the claimants' legitimate expectation?

- [67] Leave from the public service, whether paid or unpaid, was not something that was granted automatically. There was a written policy in place set out in the *General Orders* governing not only the process of leave but the range of pay options that were available. The *General Orders* provide thus:

An officer or employee who on his own initiative, gains entry to or is registered as a student of a university or other institution of learning may, subject to the exigencies of the service

(a) Be entitled to the same conditions as those attached training leave, that is, he should be allowed to retain full salary and the expenses of the training may be met by public funds (the Training Fund) provided that the training undertaken is in one of the identified service-wide priorities;

(b) Be granted study leave on full or half-pay, but with the possibility of a loan, not normally exceeding \$5,000 if the course of study is deemed to be useful to the service, but there is no need for that training at the time.;

- (c) Be granted study leave on no-pay if the course is considered to be of no immediate or direct value for public service purposes.

[68] Section 7.9.1 is in the following terms:

Each application for study leave will be considered on its own merits. Officers should make sure of the conditions under which study leave may be granted in their particular case for given courses of study before finalising plans.

[69] In 2006, the TAD published ‘**Guidance for the Award of Training & Study Leave**’. Sections 2 and 3 are relevant for our determination. They provide as follows:

2. Criteria

The Public Service Training Committee (PSTC) in the exercise of its functions as delegated by the Service Commissions utilizes the following criteria when considering requests for study leave

- (a) Priority of subject
- (b) Status of the officer (Temporary/Permanent/On Contract)
- (c) Length of service
- (d) Accreditation status of institution of study or program
- (e) Relevance of course study to Ministry/ Department
- (f) Relevance of course of study to the wider public service
- (g) Officers in receipt of scholarships/awards
- (h) The ability of the officer to undertake and benefit from the course
- (i) 3 year minimum intervening period between periods of study leave granted to individual officers.

3. Conditions of which study leave is recommended by the PSTC:

- (a) Full pay leave for courses at the Barbados Community College and for officers in receipt of scholarships

- (b) Half-pay Study Leave for final year of Bachelor's Programs  
(usually local course of study at the University of the West Indies, Cave Hill, St. Michael)
- (c) Half-pay leave for Masters programs
- (d) No-pay leave for Ph. D programs
- (e) No-pay
- (f) Not recommended

Notes:

- (1) Conditions of leave in respect of scholarships depend of the level of priority within the public service and the stipulations of the awarding body. Public Officers who are awarded scholarships must meet the criteria established by the PSTC.
- (2) It should be noted that the PSTC may consider other pertinent information and/or special circumstances which would guide its deliberations and ultimate recommendations.

[70] Based on the department's policy, it would appear to me that the stated criteria attending the grant of study leave was that such leave could be granted under the three possible conditions, that is, leave with either full pay or half-pay or no-pay. There is no evidence before me to suggest that once an application for study leave to pursue the LEC was received, the adopted practice of the decision maker was to grant leave with pay thus clothing such an expectation of the claimants with legitimacy. Indeed, the claimants' evidence, whilst providing names of some thirty persons (most of whom were police officers) they claim benefitted from paid-study leave to pursue the LEC, was no more than a list of names with no other information to aid the court in a determination. The defendants' evidence showed two things which in my view presented a better view of the true state of affairs; (1) that police officers in the vast number of applications had been granted study-leave on at least half-pay, and (2) that public officers in general were granted leave on a variety of conditions to pursue the LEC.

[71] If I am to find that the claimants had a legitimate expectation to leave with at least half-pay that was frustrated by the Training Committee, then of

necessity I have to hold, based on the evidence, either that (1) there was a promise or adopted practice which represented how the Training Committee would act and that there was no good reason to depart from that promise or practice; (2) that the Training Committee's promise or practice as to future conduct may also be denied in circumstances where to do so was their legal duty or is otherwise a proportionate response having regard to a legitimate aim pursued by the interest; or (3) the approach made no distinction between procedural and substantive expectations. (*Nadarajah v Secretary of State for the Home Department*). I cannot so hold; the evidence simply is not there.

- [72] I cannot therefore make a determination favourable to the claimants. In the context of public administration therefore, has the decision maker acted fairly? (refer *O'Reilly v Mackman; CCSU v Minister for the Civil Service*). Did the Training Committee exercise their discretion in a way which frustrated the claimants' legitimate expectation? There is no evidence before me to suggest that the decision maker acted other than fairly.

#### **The Right to be Heard/ Adequate Notice**

- [73] The claimants submitted that before there was any change in the established policy, they had a right to be informed of a pending change and given an opportunity to say why it should not be implemented with respect to each of them (*Attorney-General of Hong Kong v Ng Yuen Shiu (1983) 2 All ER 346*). The right to be heard was not satisfied by bringing a group of persons into a room after the department had settled its position.
- [74] The defendants submitted that there was no previous practice or policy of notice or consultation and I have agreed with them. A duty to consult before modifying a policy could arise from an explicit promise to do so but in this case, there was no promise to consult and therefore this ground fails.

#### **Unfair Treatment**

- [75] The claimants submitted that no-pay leave could only be granted where a course was considered of no immediate or direct value for public service purposes (refer *General Orders*). They argued that singling out one area of study as one for which no-pay leave should be granted was discriminatory and unfair and the fifth defendant should not have departed without good reason and cogent justification from its conduct which engendered a legitimate expectation. (*Michael Fordham Q.C. Judicial Review*

*Handbook 6th Ed. At pg 552; AA (Somalia) v Secretary of State for the Home Department [2007] EWCA Civ. 1040; JJ Gallagher v Secretary of State for Transport, Local Government and the Regions [2002] All ER (D) 88).*

[76] I have already found that the claimants had no legitimate expectation of paid leave so this argument cannot stand. However I am compelled to add that the evidence before me is that all persons who applied for study leave at the same time as the claimants were granted leave with no-pay. There is no evidence before me which would substantiate the view that the decision maker either was biased in their approach to the claimants' case or sought to act in an unfair manner towards the claimants or with respect to their course of study. The claimants' evidence does not substantiate the view of any discriminatory practices towards any public officer.

#### **Irrelevant Considerations**

[77] The complaint under this head is that the decision maker took into account the priority rating ascribed to each claimants application along with the financial circumstances of the state. The argument put forward was that a priority rating was an immaterial fact in terms of whether or not paid leave should be granted. Additionally, in the absence of a directive from Government's Financial Authority state finances could not be a consideration either. Study leave was granted by the conditions set forth in the *General Orders* and financial considerations were not mentioned. It was not for the Training Committee or the fifth defendant, without authority, to claim that paid leave would be withheld because of Government's inability to pay.

[78] This seems to be quite a fallacious argument. It would seem to me that financial constraints would have to be a consideration where any public authority granted an employee leave with pay. What would be the scenario if the authority could not then pay? Each of the claimants' department Heads assigned a medium priority rating to their applications. The comments of the Department Heads indicated in each case that the claimants' course of study was not a major priority for the department. In my view, these were both issues that the decision maker would rightly have to take into account.

[79] The Guidelines for Study Leave (which the claimants have not objected to) allow the Training Committee to consider other pertinent information

outside of that set out in section 3. I can find no fault in the Committee for taking the matters above into account.

**DISPOSAL**

[80] The claimants' application is dismissed. The orders sought are refused.

[81] Each party shall bear its own costs.

**Jacqueline A.R. Cornelius**  
**Judge of the High Court**