SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO. 576 OF 2003

BETWEEN:

NEVILLE CENAC

Claimant

and

THE ATTORNEY-GENERAL OF SAINT LUCIA

Defendant

Appearances:

Ms. C.L. Cenac for Claimant
Mrs. G. Taylor-Alexander for Defendant

2003: December 18;
2004: July 27;
2006: June 30.

Introduction

[1] EDWARDS, J.: Mr. Neville Cenac is a retired legislator. As a Labour Party candidate, he became an elected member of the House of Assembly in 1982. He served as Leader of the Opposition in the House from 1982 to May 1987. He crossed the floor to the Government side in 1987. He was appointed and served as Minister of Foreign Affairs from June 1987 to May 1992. He retired in May 1992 as a Minister. Thereafter he was paid a retiring allowance (pension).

[2] In May 1992 he was appointed a Senator. In October 1993 he was appointed as President of the Senate, and served in that office up until the 16th June 1997 when he ceased to be a legislator.

[3] By a fixed date claim filed on the 26th June 2003 Mr. Cenac is seeking an Order of Certiorari to quash the decision of Cabinet dated the 5th March 2003 which stated:

> "…Cabinet has declined to make an Order under section 8 (1) of the Retiring Allowances (Legislative Service) Act No. 6 of 1999 to enable Mr. Neville Cenac to receive a recomputed retiring allowance."

[4] The Attorney-General has been sued in his capacity as the Attorney General of St. Lucia on behalf of the Crown pursuant to the Crown Proceedings Ordinance Chapter 13. The Attorney-General, pursuant to Section 72 (1) of the Constitution, is the principal legal advisor to the Government. By virtue of Section 61 (2) of the Constitution, he is also a member of the Cabinet in addition to the Ministers. Pursuant to Section 61 (1) of the Constitution, the Cabinet of Ministers consists of the Prime Minister and the other Ministers in the Government.

The Legislative Service Acts and Factual Background

[5] In 1992 when Mr. Cenac retired as Minister, the Act which then provided for retiring allowance to Legislators was The Retiring Allowances (Legislative Service) Act No. 9 of 1990. Mr. Cenac became eligible for his retiring allowances pursuant to Sections 3, 4, and 6 of this Act. He qualified to be paid a gratuity at the rate of 25% of the aggregate of the salary payable to him throughout the period served as a Minister according to section 3 of this Act.

[6] Sections 4 and 6 provided as follows:

> "4. Subject to the provisions of this Act, a retiring allowance shall be paid to any person:
>
> (a) who has served before or after the commencement of this Act as Prime Minister or as a Legislator for periods equal in the aggregate to not less than eight years or for two or more Legislative terms of not less than three years;
>
> (b) has ceased to be Prime Minister or a Legislator; and
>
> (c) either:

(i) has attained the age of fifty years; or

(ii) not having attained the age of fifty years, has produced medical evidence to the satisfaction of the appropriate Minister, that he is incapable by reason of infirmity of mind or body of discharging the duties of a Legislator and that such infirmity is likely to be permanent."

6 – (1) Subject to the provisions of this Act, the retiring allowance payable to a Prime Minister shall be at the rate of three-fifths and to a Legislator at the rate of one-half of the highest annual salary paid to that person.

(2) The retiring allowance paid to a Prime Minister or to a Legislator under this section:

(a) shall be paid with effect from the date on which such Prime Minister or Legislator becomes entitled thereto pursuant to section 4 and shall continue to be paid during his lifetime; and

(b) shall be paid monthly in arrears in equal instalments."

[7] Section 10 of the 1990 Act which is similar to section 12 of the 1999 Act provided that "All awards payable under this Act shall be charged on and be paid out of the Consolidated Fund and shall be paid by the Accountant-General within ninety days of the due date. Section 12 provides for the awards to be paid "within a reasonable time of the due date. Mr. Cenac's pension benefit in 1992 was calculated by the Accountant General as $1890.00 based on his monthly salary of $5040.00 as a Minister.

[8] Upon his appointment as Senator in May 1992, Mr. Cenac should not have been paid this pension, because section 8 of the 1990 Act in clear and unambiguous words stated that:

"(1) A retiring allowance payable under this Act shall, if the person in receipt thereof again becomes a Legislator, cease to be payable during the period in respect of which that person is in receipt of salary as Prime Minister or as a Legislator.

(2) At the end of the period referred to in subsection (1) during which a person has further service as Prime Minister or a Legislator, the

rate of retiring allowance shall be re-calculated in accordance with the provisions of section 6.

(3) Where a retiring allowance is re-calculated pursuant to sub-section (2) and the person entitled thereto opts to receive such allowance by way of a gratuity and reduced allowance, then in calculating the amount of such gratuity there shall be deducted therefrom any amount already paid to such person by way of gratuity in respect of the retiring allowance, payment of which was suspended under subsection (1).

(4) A retiring allowance re-calculated in accordance with subsection (2) shall be paid at the re-calculated rate with effect from the date of cessation of the period of service as Prime Minister or as a Legislator which gave rise to the re-calculation."

Section 8 of the 1990 Act is similar to Section 10 of the 1999 Act.

[9] The evidence discloses that on the 11th October 1993 the Accountant General Mr. Anthony Isaac wrote to Mr. Cenac in the following terms:

> "…Cessation of Retiring Allowance
> During a recent audit of our terminal benefits payments the Treasury Department observed that, by virtue of section 8 (1) of the Retiring Allowance (Legislative Service) Act 1990, the retiring allowance of $1,890.00 currently being paid to you pursuant to Section 4 of such Act, should not have commenced, until such time when you cease to be a legislator.

Section 8 (1) of the said Act states:

> "A retiring allowance payable under this Act shall, if the person in receipt thereof again becomes a Legislator, cease to be payable during the period in respect of which that person is in receipt of salary as Prime Minister or as Legislator."

According to the same Act "Legislator" must be interpreted to mean "a person who has served as a member of the House of Assembly or of "the Senate", and "salary" in respect of a Legislator means "the basic salary payable to him as such and for the purposes of this definition "basic salary" means the emoluments provided in the Estimate of Revenue and Expenditure of St. Lucia exclusive of duty allowance entertainment allowance or any allowance."

It is to be noted therefore that the amount of $896.00 being paid to you monthly in your capacity as a member of the Senate, constitutes a basic salary and not an allowance, and consequently, as the Act clearly implies, the retiring allowance should not be paid therewith.

In view of the foregoing, we regrettably must inform you that the payment of retiring allowance to you will cease as of this month. Also we should be grateful if you would kindly get in touch with the Accountant General as soon as possible with a view to arranging for settlement of the overpayment for the period June 1992 to September 1993.

We deeply regret any inconvenience caused to you and respectfully look forward to hearing from you…"

[10] Mr. Cenac responded by the letter dated 27th October 1993 saying:

> "In my view, the matter which you have raised would not have risen but for an erroneous classification. The amount payable to Senators and to the President should, instead, have been entered under "Allowances" at page 21 of the current estimates.
>
> That Parliament could not have intended to pay a salary to Senators and to the President (except to Ministers in the Senate) is clear for at least three reasons:
>
> 1. the smallness of the amount relative to Parliamentarians;
>
> 2. the fact that payment of a salary would qualify for Senators, who are not Ministers to a retiring allowance under and by virtue of section 4 (a) of the Retiring Allowance Act of 1970 when read with the interpretation given to the words "Salary" and "Legislator" under section 2 thereof;
>
> 3. and the fact also that throughout the Commonwealth Senators, who are not elected, are unpaid but are in receipt of allowances only.

In the light of my reply, it is unnecessary, therefore to comment on your penultimate paragraph. But you may, for future purposes, wish to reflect on my

submission that while a person is precluded from receiving two salaries under the Crown, both on grounds of reasonableness and of equity, the smaller salary could not abolish the greater.

Further, the 1985 report of the Joint Parliamentary Committee on "Emoluments and Allowances of Parliamentarians" does not explicitly state what the payment to senators is for, only because it is too obvious. The schedule shows (quite rightly) almost the same as that paid to the Honourable President of the Senate. These figures reinforce the views expressed at first. I am sending with yours attached a copy of my letter to:

(1) The Right Honourable Prime Minister, Minister of Finance,
(2) The Honourable Attorney General
(3) The Honourable Speaker (who was Chairman of the said Joint Committee)
(4) The Director of Finance …"

[11] Mr. Cenac, in his affidavit filed on the 14th November 2003, has sought to justify the continued payment of this pension to him despite the letter dated 11th October 1993 in the following manner:

> "I replied to the said letter of the 11th October 1993, by letter dated 27th October, 1993, indicating, that it was my opinion, that as a Senator I was not in receipt of a pension but an allowance and that to give up a pension of $1,875.00 for a Senator's stipend of $960.00 meant that I not only had to give my services for nothing but I was to suffer a loss of $915.00. As a consideration of the loss which was expressed I would suffer, the sum of $1800.00; the exact amount that I was receiving as pension was paid to me in lieu of the loss… I am advised, that section 8(1) of the 1990 Act, being mandatory, it would have been contrary to the said Act for Treasury to have continued to pay me my pension and therefore it would be right to assume that the sum of $1,890.00 was not a pension but an additional sum paid, having regard to the concerns I had expressed…"

[12] As President of the Senate, Mr. Cenac was paid a monthly salary of $1,680.00 from the 6th October 1993 to 16th June 1997.

[13] Prior to this latter date, the 1990 Act was amended by Act No. 7 of 1997 on the 3rd May 1997. The pre-amble to the 1997 Act states that it is "An Act to amend the Retiring Allowance (Legislative Service) Act, 1990 for the removal of difficulties in

exceptional cases." As a result of this amendment, the new provision Section 6A which was inserted stated:

> "(6A) (1) If any difficulty arises in connection with the application of section 6 to any exceptional case, Cabinet may make such Order for removing the difficulty as it may consider necessary for that purpose, and any such Order shall modify section 6 to the extent necessary to carry the Order into effect.
>
> (2) Any Order made under subsection (1) shall come into force on the day specified in the Order for the Order to come into effect.
>
> (3) For the purpose of this section any case where a person has occupied a substantive post as a full Minister and the salary attached to the post of a Minister is, on the day of his retirement, higher than the salary attached to the position the person occupies on his or her retirement, shall be deemed to be an exceptional case and the prejudicial or other effect shall be deemed to be a difficulty.
>
> (4) An Order made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

[14] The expression "subject to negative resolution of the House" when used in relation to any statutory instrument or statutory documents means, by virtue of Section 38(8) of the Interpretation Act No. 18 of 1968, "that such instruments or statutory documents shall, as soon as may be after they are made, be laid before the House and if the House, within the statutory period next after any such instrument or document has been so laid resolves that the instrument or document shall be annulled, the instrument or document shall be void as from the date of the resolution, but without prejudice to the validity of anything done thereunder or to the making of a new instrument or document."

[15] After the 16th June 1997, Mr. Cenac continued to receive his pension of $ 1,890.00 monthly. In 1999, the 1990 Act as amended was repealed by The Retiring Allowance (Legislative Service) Act No. 6 of 1999. Section 8 of the 1999 Act provides as follows:

"(8) - (1) "If a difficulty arises in connection with the application of section 7 to an exceptional case, Cabinet may make an Order for the purpose of removing the difficulty and the Order shall modify Section 7 to the extent necessary to carry the Order into effect.

(2) An Order made under subsection (1) shall come into force on a day to be specified in the Order.

(3) For the purposes of this section, an exceptional case includes a case where a legislator has in the past occupied a post as Minister but on the day of his retirement the Legislator occupied a post as a member of the House of Assembly or Senate to which is attached a salary lower than that of Minister and the prejudicial effect shall be regarded as a difficulty.

(4) …"

[16] Although when an Act is repealed in its entirety, it ceases to have effect, Section 27 (1) of the Interpretation Act states that the repeal shall not:

"(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed or revoked;
(d) …; or
(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked."

[17] By their Agreed Statement of Facts filed on the 28th November 2003, the parties agree that in May 2000, the recommendations of the 1999 report of the Salaries Review Commission increased the salaries of Ministers from $5,040.00 to $8,624.17. This increase was made retroactive for a period of 1 year from the 23rd May 1996 to the 23rd May 1997. This retroactivity necessitated a re-computation of the retiring benefits of the Ministers under the former administration.

[18] On the 28th July 2000 Mr. Cenac wrote to the Accountant General, expressing his opinion that section 8(3) of the 1999 Act applies to him. Since he had in the past occupied a post as Minister, and on the day of his retirement, as a Legislator, he occupied a post in the Senate as President, to which was attached a salary lower than that of Minister.

[19] This letter along with his four other subsequent letters to the Accountant General explained the need for an immediate adjustment upwards, for the rate at which his retiring allowance was calculated. Mr. Cenac in these letters demanded a recalculation of both retiring allowance and gratuity having opted for both, as per section 9(1) of the current Act. Section 9(1) of the 1999 Act provides:

> "A Legislator who is entitled to a retiring allowance under this Act may, at that Legislator's option exercisable in accordance with subsection (2), be paid instead of retiring allowance at a rate provided for in section 7, an allowance at a rate of three-fourths of the retiring allowance provided for under section 8 together with a gratuity equal to twelve and one-half times the amount of the reduction made in the retiring allowance."

[20] The corresponding provision in the 1990 Act was section 7(1) which provided:

> "Any person who is entitled to a retiring allowance under this Act, may, at his option exercisable in accordance with subsection (2) be paid, instead of a retiring allowance at the rate provided for in section 6, a retiring allowance at the rate of three fourths of such allowance together with a gratuity equal to twelve and one-half times the amount of reduction so made in the allowance."

[21] The Accountant General wrote to Mr. Cenac on the 30th March 2001 and the 3rd October 2001, but did not address the substance of Mr. Cenac's several letters until the 8th February 2002. It is important to reproduce certain material portions of this letter which impact on the issues at hand. It stated:

> "I am now in a position to respond fully to the issues raised in your letters of July 28, 2000 and January 19, 2001 having recently received the opinion of the Attorney General on the matter."

The two issues we sought to determine were as follows:

> (a) Whether you by virtue of having previously held office as a Minister and subsequently as President of the Senate, earning a salary lower than that of a Minister, qualifies as an exceptional

case within the meaning of Section 8(3) of the Retiring (Legislative Service) Act No. 6 of 1999.

(b) Whether for the purposes of Section 8(3) of the Act, you as President of the Senate should have been paid a salary equivalent to that of a Minister, and if so whether you are entitled to compensation for loss of earnings during the relevant period served as President of the Senate.

Section 8 of the Act states that … [See paragraph 8 of this Judgment where section 8 has been previously reproduced]. According to our records, you held office as Minister of Foreign Affairs from 1st June 1987 to 31st May, 1992 at a monthly basic salary of $5,040.00 and subsequently, at the time of your retirement as President of the Senate, from 6th October, 1993 to 16th June, 1997 at a monthly salary of $1, 680.00.

It is clear from the above, that you once occupied the post of Minister and that at the date of your retirement you were a legislator occupying a post as a member of the Senate at a salary lower than that of a Minister.

However, as you are aware, you in fact received and continue to receive a monthly pension which is based on the highest annual salary paid to you as a Legislator. That salary was the amount received as a Minister from 1987 to 1992.

We are of the view, therefore, that you have not been prejudiced with regard to the payment of your retirement allowance, since the retiring allowance of which you are currently in receipt, is higher than what you would have received if your pension was based on the salary as President of the Senate.

Your situation therefore does not qualify as an exceptional case within the meaning of Section 8(3) of the Act with respect to the second issue highlighted earlier, we wish to point out that you were entitled to a salary equivalent to that of a Minister during your tenure as a President of the Senate, and by extension not entitled to compensation for loss of earnings during that period. This view is

predicated primarily on the fact that the scope and purpose of the retiring Allowances Act relates exclusively to the payment of gratuities and pensions to Legislators and should not be extended to provide for remuneration or salaries.

I sincerely hope the foregoing has served to clarify the issues raised by you. We are available to provide further clarification if needed…"

[22] The issues certainly were not clarified, as far as Mr. Cenac was concerned. In a subsequent letter dated 3rd June 2002, Mr. Cenac pointed out to the Accountant General that he had:

> "failed to take into account…that as of the 23rd May 1996, the salary of a Minister having grown, retroactively from $5,040.00 to $8, 624.17 whether, therefore having held the office of President up till 16th June, 1997, during the period of the retroactivity, …(he qualified) to have… (his) pension recalculated at the new ministerial salary, in the light of Section 8(3)"

By giving an illustration in his letter, Mr. Cenac sought to convince the Accountant General that the words "to which is attached a salary lower than that of Minister" in section 8(3) of the 1999 Act, refers not to the salary he received as Minister of Foreign Affairs in 1992, "but to the current salary of a serving Minister." And so, by virtue of the fact that he had occupied the position of Minister of Foreign Affairs in 1992, he would be prejudicially affected if when he retires, his pension is not calculated at the highest salary being paid to a serving Minister.

[23] A previous claim No. 904 of 2002 which was brought by Mr. Cenac on the 29th September 2002 against the Attorney General without the leave of the Court, was struck out by Shanks J. on the 2nd June 2003. The learned Justice Shanks directed the matter to proceed as if an application for leave had been made for judicial review. Mr. Cenac was ordered to file a new claim form and affidavit in compliance with part 56.7 of the CPR seeking review of the decision of the 5th March 2003.

The Pleadings

[24] Mr. Cenac contends at paragraph 15a of his supporting affidavit filed on the 26th June 2003, that the Current Act is in the nature of a Parliamentary Contract conferring certain pension benefits to Legislators who meet certain statutory qualifications enshrined therein. He has pointed out the following as inconsistencies in the Attorney General's and the Accountant General's statements, actions and evidence:

(1) In the affidavit of Mr. Petrus Compton filed on the 19th November 2002 in Claim No. 904 of 2002, he did not admit that the retroactive increase in salary necessitated a re-computation of the Minister's retiring benefit i.e. retiring allowance and gratuity. However he deposed that the retroactive increase in salary only entitled Mr. Cenac to a retroactive payment of salary for the period of 12 months ending on the 23rd May 1997, since the Salary Review Commission and its recommendations in its 1999 report relate only to the salaries and not retirement benefits of Ministers.

(2) In a letter dated 27th December 2002 the Attorney General apparently resiled from that position. The letter written by Senior Crown Counsel Mr. Paul Thompson in the Attorney General's Chambers stated that "the Attorney General's Chambers is of the opinion that Mr. Cenac does qualify as an exceptional case under Section 8(3) of the Retiring Allowance (Legislative Service) Act No. 6 of 1991.

(3) In his affidavit filed on the 13th January 2003, Mr. Petrus Compton deposed that he was now informed that the retroactive increase in salary did necessitate a recomputation of the Minister's retiring benefits, that is to say retiring allowance and gratuity.

(4) In his affidavit filed on the 17th October 2003. Mr. Compton's approach was that:

"(a) The provision of the Retiring Allowance (Legislative Service) Act No. 6 of 1999 which came into effect on the 1st January 1998 does not apply to Mr. Cenac but only to Legislators who retire on or after the 1st day of January 1998.

(b) Mr. Cenac duly received a retirement allowance and gratuity under the Retiring Allowance

(Legislative Service) Act No. 9 of 1990 as amended.

(c) The new or current Act contained no savings or retrospective provisions relating to the repealed Act.

(d) Mr. Cenac has therefore acquired no new rights or any rights to a re-computation of his gratuity and retiring allowance under the new or current Act."

(5) Notwithstanding these statements, Mr. Compton deposed that by virtue of section 8(3) Mr. Cenac would be considered an exceptional case since he was legislator who at the time of his retirement in June 1997 qualified as an exceptional case under the Repealed Act since he had in the past occupied a post of Minister at a monthly salary of $5,040.00 but on the date of his retirement occupied the post of President of the Senate at a monthly salary of $1,680.00, which salary was lower than that of a Minister. Further, that "Cabinet is only empowered to act under section 8(1) in relation to an exceptional case where there is a difficulty and a party has been prejudiced with regard to the payment of a retiring allowance. Cabinet is of the view, that Mr. Cenac has not been prejudiced with regard to the payment of the retirement allowance and further the retirement allowance that Mr. Cenac is currently in receipt of is higher than what he would have received if his pension was based on the salary as President of the Senate."

(6) In this same affidavit Mr. Compton in substance deposed that whereas the report of the Salaries Review Commission did not in any way or at all affect the salary of Mr. Cenac as Minister since he had retired from his ministerial responsibilities in May 1992 and had been receiving a pension therefrom, this said report affected Mr. Cenac as President of the Senate since it did the following:

(a) classed the position of President of the Senate as a part-time position;

(b) determined that part time position should not to be entitled to a salary but that retainers should be paid for that post;

(c) determined that that post should be evaluated and its ranking determined and then placed in a respective band with an appropriate salary scale.

By virtue of the report the position of President of the Senate was placed in band 20;

(d) determined that the retainer should be paid monthly at a level equal to 25% of the salary for the relevant band;

(e) that the grade 20 assigned to that of the President of the Senate a attracted a monthly retainer of $1,793.17."

(7) That based on these recommendations the Commission determined that retroactively the monthly retainer to be paid to the President of the Senate was $1,793.17.

(8) The Accountant General has been inconsistent and discriminating, in calculating the retiring benefits of another Legislator similarly affected as Mr. Cenac, as is evidenced by the authenticated Treasury document dated 21st March 2002 headed "Computation of Retroactive Salary/Retiring Benefits Deceased Alan Bousquet Former Minister" (the document).

(9) The uncontradicted affidavit evidence of Stephenson King, Chairman of the United Workers Party, and former Senator discloses, that Mr. Bousquet was a Cabinet Minister intermittently between 1964 and 1987. Between 1982 to 1987 he was a Minister earning a salary of $4,500.00. In 1992 Mr. Bousquet was appointed Deputy Speaker of the House, and he served in this capacity up until 1997 when he retired as a Legislator. While he was Deputy Speaker, the salary of a Minister was increased from $4,500.00 to $5,040.00.

(10) Mr. Bousquet was concerned that upon his retirement in 1997 his pension would have been calculated at the former Minister's salary of $4,500.00 pursuant to section 6(1) of the 1990 Act, although he was retiring as a Deputy Speaker. It appears that Mr. Bousquet had expressed those concerns to Prime Minister Lewis in 1997. According to Mr. Stephenson King, it was as a result of Mr. Bousquet's concerns that the Retiring Allowances Act of 1990 was amended just before the dissolution of Parliament in 1997.

(11) Mr. King has deposed that "the purpose of the 1997 amendment was to ensure, that once a person had been a Minister and afterwards held a post in Parliament at a salary lower than that of a Minister, upon retirement from that just, his pension would be based on the salary currently being paid to a Minister, if the salary

of a Minister had been increased, and his pension would not be based on the salary he had last received as a Minister."

(12) The Bousquet document discloses the following:

(a) Mr. Bousquet's pension was not calculated at the highest salary paid to him in 1987 which was $4,500.00 monthly, but on the basis of the salary being paid to a Minister in 1997 which was $5,040.00, although he was retiring as Deputy Speaker of the House.

(b) Mr. Bousquet's pension benefits were recalculated on the basis that his salary when he retired was $8,624.17 monthly.

(c) Mr. Bousquet's gratuity was also recalculated because of the Minister's salary increase to $8,624.17.

(d) There was also an additional sum added from an "application of 3% increase to all pensions effective April 1, 2000."

(e) Mr. Bousquet's salary back pay amounted to $43,438.44, his retroactive pension was $48,729.85, and his additional gratuity was $67,203.12.

(13) Mr. Stanislaus Bousquet, one of the four heirs of the deceased Alan Bousquet deposed in his affidavit filed on the 16th December 2003, that prior to his death Mr. Alan Bousquet was paid the retiring benefits due to him. Further, that as a result of the increase in the salaries of Parliamentarians his father's retiring benefits were re-computed and paid to his heirs in August 2003.

[25] Mr. Cenac contends that since the payment concerning Mr. Alan Bousquet's pension and gratuity benefits were obviously made without any order by Cabinet, then this conflicts with the Attorney General's posture in his affidavit filed on the 19th November 2002. At paragraph 18 of this affidavit, Mr. Compton deposed:

> "that only the House of Assembly has the power to remove such a difficulty and the claimant has no legal right to obtaining the removal of the difficulty by Cabinet under 8(1) of the current Act since the power vested in Cabinet and the House of Assembly to make such an Order is discretionary."

[26] Mr. Cenac alleges that the Prime Minister as Minister of Finance was requested by him to intervene, having regard to the fact that Mr. Alan Bousquet had been paid and that this could only be seen as discriminatory, partial and unequal treatment of Mr. Cenac's case. He points to the non-intervention and silence of the Prime Minister, the absence of reasons for the Cabinet decision up until the 17th October 2003 when the Attorney General filed his affidavit giving reasons, and the inconsistency in the Attorney General's statements, as evidence that there is a vain of bad faith emerging throughout the handling of his case. He alleges that this bad faith had been due to his political history because he crossed the floor to the Government side in 1987, and his claim is an opportunity found, to punish him wherever and whenever the Executive has an absolute discretion. Mr. Cenac also alluded to the threats made on his life when he crossed the floor, and the aborted attempts of the Ruling Labour Party Government in 1997 to pass a law prohibiting floor crossing, as further evidence, that there is underlying bad faith in handling his claim for the recalculation of his retirement allowances.

[27] On the other hand, Mr. Compton in his affidavit filed on the 15th December 2003 has dismissed Mr. Cenac's allegations of bad faith and political malice on the part of the Attorney General, the Prime Minister, and Cabinet, as ill founded and unjustifiable. As for the allegations that there was a call for Mr. Cenac's death when he crossed the floor in 1987, Mr. Compton contends that this is unreliable, and Mr. Cenac is referring to incidents wholly unrelated to the present Cabinet and administration. Mr. Compton deposed that there is nothing in Act No. 7 of 1997 which suggests that the amendment was created for Mr. Alan Bousquet. Section 6A was not a remedy for Mr. Bousquet or Mr. Cenac, the Attorney General deposed. "If therefore any payment had been made to Alan Bousquet by the Treasury Department under Section 6A that payment is ultra vires and ought not to be followed as a precedent."

Mr. Compton contends that the Salaries Review Commission did not affect an increase in Mr. Cenac's retiring allowance, that this action is ill founded and a waste of the Court's time and resources.

The Issues

[28] Counsel for the parties identified 16 issues in their Agreed Statement of Issues, some of which I consider to be collateral issues which can easily be subsumed under main issues. There is also one other important issue which has not been identified by Counsel.

[29] The reformulated main issues therefore are:

(a) To what extent if any did the Amendment to the 1990 Act, No.7 of 1997, and the Act No. 6 of 1999 affect Mr. Cenac's retirement allowances when he resumed his retirement in May 1997? (See paragraphs 30 to 66 of this judgment).

(b) Did Section 6A(1) of the amended 1990 Act give Cabinet a discretion in the exercise of its power to make an Order to remove the difficulty in an exceptional case, or was it a mandatory duty? (See paragraphs 30 to 66 of this judgment).

(c) To what extent if any did the retroactive salary increases arising from the 1999 Salaries Review Commission Report affect Mr. Cenac? (See paragraphs 68 to 97 of this judgment).

(d) Could the Accountant General lawfully remove a difficulty in an exceptional case, as he twice did in Mr. Alan Bousquet's case, without a Cabinet Order to remove the difficulty? (See paragraphs 98 to 103) of this judgment).

(e) Was Mr. Cenac an exceptional case, and did the Cabinet exercise its duty and discretion lawfully with respect to Mr. Cenac's case? (See paragraph 104 to 120 of this judgment).

I will therefore now consider the first and second issues together.

Resumption of Retirement

[30] It is evident that Sections 8 and 6 of the amended 1990 Act applied to Mr. Cenac in May 1997 when his legislative term came to an end. These 2 sections have been reproduced at paragraphs 6 and 8 of this Judgment. Although Section 8(1) of this Act had been contravened, with no reasonable and acceptable explanation

from the Accountant General as to why Mr. Cenac continued to receive monthly pension payments during the period 1992 to 1997 when he was Senator and then President of the Senate, in my view, this did not suspend the operation of the other provisions in Section 8 of the Amended 1990 Act, as they related to Mr. Cenac when he resumed retirement. By virtue of section 8(2) of this Act, all that was required when Mr. Cenac ceased being a Legislator in May 1997, and resumed his retirement, was for the rate of retiring allowance to be re-calculated, in accordance with the provisions of section 6 of the Act, by the Accountant General.

[31] Sections 8 and 6 are provisions drafted in a precise and unambiguous manner. The Rules of Construction require the Court therefore to construe the words in their natural and ordinary sense.

[32] Section 8(2) made re-calculation of Mr. Cenac's retiring allowance mandatory since it stated that:

> "the rate of retiring allowance shall be re-calculated in accordance with the provisions of section 6"

[33] Section 6 states that the retiring allowance payable to a Legislator shall be at the rate of one-half of the highest salary paid to that Legislator Subject To the Provisions of This Act. This means therefore that in recalculating Mr. Cenac's retiring allowance, the re-calculations must be subject to Section 6A, meaning that Section 6A must be taken into account. The parties and their Counsel all agree that Mr. Cenac qualified as an exceptional case under Section 6A of the Amended Act. However, I shall not for now assume, that he was an exceptional case in May 1997. It follows therefore that in May 1997 when he ceased being a legislator and resumed his retirement, he was entitled to have his pension recalculated by the Accountant General, and that in making those calculations, if he in fact was an exceptional case under Section 6A, then this should have been taken into account. This now leads me therefore to consider Sections 27(1) and 28(2) (c) and (d) of the Interpretation Act, as it relates to the repeal of the Amended 1990 Act by the 1999 Act.

The Repeal

[34] Section 27(1)(c) and (e) of the Interpretation Act provides:

> "27-(1) Where an enactment repeals or revokes an enactment the repeal or revocation shall not:
>
> (a) revive any enactment or thing not in force or existing at the time at which the repeal or revocation takes effect;
>
> (b) affect the previous operation of the enactment so repealed or revoked, or anything duly done or suffered thereunder;
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed or revoked.
>
> (d) …
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation liability, penalty, forfeiture or punishment aforesaid;
>
> and any such investigation, legal proceeding or remedy maybe instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the enactment had not been repealed or revoked."

[35] Section 28(2)(c) and (d) state:

> "Where an enactment repeals or revokes any enactment (in this subsection…called "the old enactment") and substitutes, another enactment [provision] therefore by the way of amendment, revision or consolidation:
>
> (a) to (b) …
>
> (c) all proceedings taken under the old enactment shall be prosecuted and continued under and in conformity with the enactment so substituted, so far as consistently maybe;
>
> (d) …in the enforcement of rights existing or accruing under the old enactment or in any other proceedings under the old enactment, the procedure established by the enactment so substituted shall be followed so far as it can be adapted ;…(e)…"

[36] There has therefore been a general acceptance by the parties and their Counsel that any existing rights that Mr. Cenac had under the amended 1990 Act relating to

his retiring allowances, and which had not been addressed before the coming into force of the 1999 Act would have survived the repeal of the amended 1990 Act.

[37] Though the 1999 Act was assented to on the 25th January 1999, it had a retrospective effect. Section 15 provided that it "shall be deemed to have come into force on the 1st day of January 1998." Since Mr. Cenac commenced no proceedings, to enforce his right to have his pension recalculated, pursuant to Section 8(2) of the 1990 Act, before the 1st of January 1998, it follows that Section 28(2) (c) of the Interpretation Act does not apply in this case. The applicable sections are therefore Section 27(1) (b), (c) and (e), Section 28(2) (d) in my opinion.

[38] I must note my observations that the Claimant's case has been proceeding, as if Mr. Cenac's acquired rights under section 6A of the repealed Act have been transferred to Section 8 of the 1999 Act. My understanding of Section 27(1)(b), (c) and (e), and Section 28(2) (d) of the Interpretation Act, leads me to conclude that this approach is incorrect. Though his rights have been acquired under Sections 8(2), 6 and 6A of the repealed amended 1990 Act, in enforcing his rights acquired under the repealed Act, it is the procedure established under the 1999 Act for enforcing such corresponding rights under sections 10(2), 7 and 8 of the 1999 Act, that must be followed as far as it can be adapted. This now leads me therefore, to the interpretation of Section 6A of the Repealed Act and the submissions of Counsel.

Submissions of Counsel

[39] Learned Counsel Ms. Cenac submitted that Section 6A(3) of the 1990 Act as amended bears a striking likeness to Section 8(3) of the 1999 Act except for the substitution of one or two words and the re-arrangement of mainly section 8(3). Despite this, the essence of the 1990 Act as amended still comes through strongly and clearly in the 1999 Act she said.

[40] Ms. Cenac regarded the 1999 Act as a Consolidating Act, and she relied on the definition of Consolidating Acts in Odgers on Deeds and Statues 4th ed pages 237-239 where it is stated:

> "Consolidating Acts usually repeal a number of prior statutes but reproduce them in substance, it being…a presumption that it is not the intention of the legislator to alter the law by a consolidating Act but merely to collect it and fit it together in one Act unless the intention to alter the law plainly appears."

[41] She also regarded Section 6A(1) of the 1990 Act as amended, and Section 8(1) of the 1999 Act as similar. She said that these provisions relate to the application of those Acts to exceptional cases. Section 6A(4) of the 1990 Act, as amended, and Section 8(4) of the 1999 Act specify how the order must be treated by the House, Ms. Cenac said.

[42] She submitted that subsections (3) of both Acts deal specifically with an exceptional case, they clearly and unambiguously set out who is the person who will qualify as an exceptional case.

[43] Now it is true that Section 6A(3) of the 1990 Act as amended, and section 8(3) of the 1999 Act both define what is an exceptional case. However while in Section 6A(3) of the Repealed Act the category of an exceptional case is closed, and means only a case where a person has occupied a substantive post as a full Minister and the salary attached to the post of a Minister is, on the day of his retirement higher than the salary attached to the position the person occupies on the day of his or her retirement. It remains open, and it is not closed in Section 8(3) of the 1999 Act. This is obvious to me from the presence of the words "…an exceptional case includes…" in section 8(3).

[44] It is evident therefore that under the 1999 Act there are other types of situations that a retiring legislator may find himself in when section 7 of the 1999 Act is applied to him, which may be regarded as an exceptional case.

[45] Learned Counsel Ms. Cenac recognized this, and argued further as follows:

(i) The power of Cabinet under section 8(1) is, that where a Legislator applies to Cabinet as an exceptional case, Cabinet is free to treat or not to treat the case as an exceptional case, being under no obligatory duty.

(ii) If however, the Cabinet determines the case to be an exceptional case, Cabinet would then be under an obligatory duty to make an order to remove the difficulty. This reasoning is in line with the case Padfield and Others v Minister of Agriculture [1968] All E.R. 694 at page 700 paragraph C-D: There, the Minister said that what he feared was that once he had sent the case to the Committee of Investigation he would have had to make an Order to Parliament.

(iii) The Order of Cabinet would then be laid before the House for ratification which the House would be free to ratify or not.

(iv) If the House rejects the Order by a negative resolution, this is the end of the matter.

(v) Under section 8(1), Cabinet has the power and authority to determine the fate of an applicant, and has to determine whether the case brought before it deserves to be included as an exceptional case apart from the exceptional case stipulated under section 8(3), and to prescribe the remedy.

(vi) But under Section 8(3) it is completely different because Parliament has already determined the circumstances existing in Section 8(3) as an exceptional case with a difficulty. The remedy Ms. Cenac argued, is deductible from the words: "to which is attached a salary lower than that of a Minister and the prejudicial effect shall be regarded as a difficulty."

(vii) Cabinet's role therefore under Section 8(3) is a mandatory one, she argued, that is, to make an order in terms of section 8(3) for the ratification of the House, which the House can only amend but would be bound to ratify for Parliament has finished its work under section 8(3). To ask Parliament to re-masticate what it has already chewed, swallowed and digested would be a useless exercise and a waste of Parliament's time, that would accomplish nothing, and would in essence be giving the House the power to overrule Parliament (which comprises two Houses, namely the Senate and the House of the Assembly), she submitted. Ms. Cenac referred to two other cases in support of her submissions: Julius v Bishop of Oxford (1880) 5AC 214 and

Nottinghamshire County Council v Secretary of State for the Environment [1985] H.L.

(viii) In Julius v Lord Bishop, Lord Cains L.C. at page 225 stated:

> "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to when a definition is supplied by the Legislator of the conditions upon which they are entitled to call for their exercise, that power ought to be exercised, and the Court will require it to be exercised."

(ix) In the Nottingham case, at page 215, Lord Templemen stated that the House of Commons retains a supervisory control where the statute requires an annual report to be laid before the House by the Secretary of State for the approval by the House. On this authority Ms. Cenac submitted that the role of the House of Assembly under Section 8(4) is to offer guidance only where the exceptional case falls under section 8(3) of the 1999 Act.

(x) Ms. Cenac also submitted that no difficulty arises in connection with the application of section 7 to the exceptional case enunciated in section 8(3), since Parliament has not only itself furnished the exceptional case, but has also furnished the remedy, and by so doing. Parliament finished its work as regards section 8(3).

(xi) Since under section 7(2)(b) a legislator, who has been a Minister is entitled to a retiring allowance of one-half of his ministerial salary, the benefit to the legislator under section 8(3) depends upon whether the ministerial salary of which he had been in receipt had been increased, while he was holding another post of a lesser salary. Section 8(3) must therefore be seen as a proviso to section 7(2)(b) and as a second exception to the general rule, the first being the Prime Minister receiving three-fifths of his highest annual salary under section 7(2)(a) .

(xii) Finally, Ms. Cenac submitted that section 7(2)(b) of the 1999 Act is modified as it were by section 8, thus, the retiring allowance payable to a Legislator, other than a Prime Minister shall be one-half of the highest salary paid to that Legislator, or one-half of the salary paid to a serving Minister, if that Legislator qualifies under Section 8(3).

[46] Based on these submissions, Ms. Cenac contends that Mr. Cenac qualifies as an exceptional case within the meaning of section 6A(3) of the Amended 1990 Act, and section 8(3) of the 1999 Act, as put forward by her.

[47] Before considering the submissions of Counsel for the Attorney General, I must point out another difference between section 6A (3) and Section 8(3) of the Acts. Apart from the fact that the category of cases which qualified as an exceptional case is closed under Section 6A (3) unlike Section 8(3), the concept of "a difficulty" is to be defined in terms of "a prejudicial or other effect" in section 6A (3). In my opinion the impact of this on Section 6A(1) therefore, is that Cabinet may make an order to remove the difficulty where the legislator suffers prejudice, or where though he may not be prejudiced, the fact that the legislator is an exceptional case, this has had some other effect on him. I shall not venture to state what "other effect" is contemplated under the Repealed Act. The situation in Section 8(3) of the 1999 Act is different, since it is only a "prejudicial effect" that is to "be regarded as a difficulty."

[48] Learned Counsel Mrs. Taylor-Alexander submitted, that Parliament, by enacting Section 6A (3) of the amended 1990 Act, did not provide a remedy for Mr. Cenac. She argued that even though Mr. Cenac was an exceptional case according to Section 6A (3) of the 1990 Act, and may have had a difficulty, it did not follow that Section 6A (3) had already removed that difficulty by the provision in Section 6A (3).

[49] Mrs. Taylor-Alexander stated, that the basic rule of construction requires that a statute must be interpreted according to the intention of Parliament, which intention can only be seen by the examination of the words used in the provisions of the Statute. She contended that if Parliament meant for Section 6A (3) to have the result contemplated by Mr. Cenac and his Counsel, it would have simply gone on to say that, "where such difficulty arises the retiring allowance payable to a

legislator shall be at the rate of ½ of the annual salary paid to a Minister on the day of retirement of the Legislator."

[50] She submitted that the use of the words "For the purpose of this section" in Section 6A (3) of the 1990 Act, defeats the contention of Mr. Cenac, because these words make it necessary that subsection 6A (3) be construed in accordance with the whole of Section 6A. I accept this argument of Counsel.

[51] Mrs. Taylor-Alexander stressed the importance of the role that Parliament intended the Cabinet to play, in deciding how the difficulty should be dealt with. Parliament, she said, obviously intended for Cabinet to have power to decide how much the Claimant should be paid by way of retiring allowance, other than what section 6(1) prescribes. Cabinet has a number of options she argued. It could order that Mr. Cenac should be paid the retiring allowance of a Legislator, he having retired as a Legislator; it could order that he be paid the retiring allowance according to the salary he received on the day he retired as a Minister, as opposed to a legislator; or the current salary payable to a Minister at any time prior to his retirement, or a combination or average of any two of the foregoing. Only Cabinet can determine the rate at which he is paid, she argued, and only Cabinet may make an order modifying Section 6 accordingly. Where Cabinet makes the order, the House of Assembly can reject or endorse that order, she submitted.

[52] She challenged Ms. Cenac's submissions that the Cabinet's only role under Section 8(3) would be to make a mandatory order in terms of Section 8(3). This conclusion she submitted, is an obvious misinterpretation of Section 6A (1). The power given to Cabinet is not to make an order to determine whether a difficulty arises, the power is given to Cabinet, if a difficulty arises, to make an order to remove the difficulty. She submitted that all that Section 6A (3) does is to determine that a difficulty arises.

Construction of Section 6A (3)

[53] In my opinion it is Section 6A of the Amended 1990 Act that falls for interpretation and not Section 8 of the 1999 Act, for the reasons mentioned at paragraphs 34 to 38 above.

[54] The interpretations advanced by Learned Counsel Ms. Cenac for Section 6A (3) of the Amended 1990 Act, and Section 8 (3) of the 1999 Act are artificial, forced and irrational in my view, having regard to the fact that these provisions are unambiguous and precise. I prefer the approach of Learned Counsel Mrs. Taylor –Alexander concerning the meaning of Section 6A (3). I have construed the plain and ordinary meaning of Section 6A (3) in relation to Mr. Cenac in substance to be as follows:

(a) A retiring Legislator who has in the past been a full Minister is an exceptional case, where on the day of his retirement, the current salary of a Minister is higher than the salary attached to the position he occupies as a legislator.

(b) In such a case any prejudice to him, or other effect, that is a consequence of being a former Minister, retiring at a time when the salary of a current Minister is higher than the salary that the retiring Legislator presently receives as Legislator, shall be regarded as a difficulty.

[55] I have interpreted the words “salary attached to the post of a Minister” to be the salary of a current Minister, because of the presence of the verb “is” after the word “Minister, the context of the provision, and Section 29 (1) of the Interpretation Act which states – “Every enactment shall be construed as always speaking and anything expressed in the present tense shall be applied to the circumstances as they occur, so that effect may be given to each enactment according to its true spirit, intent and meaning.”

Applicable Rules of Construction

[56] I do not consider Section 6A (1) to be in precise and unambiguous terms. The mere fact that both Counsel have agreed on the following two (2) issues, as arising from the provision in Section 6A (1) of the amended 1990 Act supports my view. Their Agreed issues were:

(1) Does the provision of the Retiring Allowances (Legislative Service) Act 1990 as amended and the 1999 Act give Cabinet the discretion to exercise its power to make an Order?

(2) Is the ability of Cabinet to act under the Acts, mandatory or permissive in nature?

[57] The basic rules of construction permit me to consider the purpose of the Amending Act No.7 of 1997 in resolving this ambiguity. "[I]f any doubt arises from the terms employed by the legislature; it has always been a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer [Stowe vs Lord Zouch (1569) 1 Plowd 353 at 369] is "a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress:" (Per Tindal CJ, in Sussex Peer Case (1844) 11 C1 & FIN 85 at 143). Also, Section 10 (1) of the Interpretation Act states that the preamble to an enactment shall be construed as a part thereof intended to assist in explaining the purport and object of the enactment.

[58] I have further reminded myself, that "the office of Judge is to make such construction as will suppress the mischief and advance the remedy, and to suppress all evasions for the continuance of the mischief:" (Magdalen College Case (1616) cited in Maxwell on Interpretation of Statutes 12th ed. 118).

[59] The Mischief Rule allows the Court to trace the history of the Act or provision of the Act which is under review. Lord Halsbury explained it succinctly: "To construe the Statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the latter Act which provided the remedy": (Eastman Photographic Co. vs Comptroller – General of Patents [1898] A. C. 571, 576).

[60] English authorities establish that material which is extrinsic to the legislation itself may be resorted to in aid of interpretation, in endeavouring to discover the mischief to be remedied, the subject matter that the legislation intended to deal with, or the legislation's general background. Although the aim is to ascertain the intention of the legislature, not only are the parliamentary debates excluded but also the reports of commissions and advisory committees, ministerial pronouncements and explanatory administrative memoranda: (Maxwell on Interpretation of Statutes, 12th ed. Pages 47 to 58).

The Mischief and the Remedy

[61] Though I cannot advert to the Hansard Debate Records concerning the 1997 Amendments, there is the Affidavit evidence of Mr. Stephen King previously referred to at paragraph 24 (9), (10) and (11) of this judgment. There is also the Bousquet document, referred to at paragraph 24 (8), (12) and (13) above. The pre-amble to the Act No.7 of 1997 states that it is "An Act to amend the Retiring Allowances (Legislation Service) Act, 1990 for the removal of difficulties in exceptional cases."

[62] The purpose of the Act therefore was clearly to provide a remedy which would modify Section 6 (1) of the 1990 Act so that a retiring Legislator who was formerly a full Minister would not have his retiring allowance calculated at the rate of one-half of his annual salary as a former Minister, where the highest annual salary he has ever been paid as a Legislator is his annual salary as a former Minister.

[63] The means provided by the Amending Act for achieving that purpose is in Section 6A (1) of the Amended 1990 Act in my judgment. The removal of the perceived "difficulty" was clearly of great concern to Parliament. The provision has not stated that where there is a difficulty in an exceptional case under Section 6A (3), the difficulty shall be removed by calculating the retiring allowance payable to the Legislator at the rate of one-half of the current salary paid to a Minister on the day of the Legislator's retirement. The Cabinet is required to consider what is necessary to remove the difficulty, and then make an order for removing the difficulty.

Interpretation of 6a (1)

[64] It has been maintained by Counsel for the Attorney-General that under Section 6A (1) the Cabinet had a discretion to make or not to make an order to remove the difficulty. The words "may make such order for removing the difficulty as it may consider necessary", could be indicative that Cabinet has some discretion. However, the nature or Cabinet's discretion must be inferred from the words in the Act, and from the general scope and object of the Act.

[65] In my opinion the language in the pre-amble to Act No.7 of 1997 supports the view, that Mr. Cenac had a right to an order to remove any prejudice or other effect that existed on the date he resumed his retirement, if in fact he was an exceptional case. In one of the authorities relied on by learned Counsel Ms. Cenac, Lord Blackburn made judicial pronouncements which are applicable in my opinion to the power conferred on the Cabinet in Section 6A (1). The facts of that case need not be mentioned, it is the principle stated by Lord Blackburn that matters. Lord Blackburn opined that "…if the object for which the power is conferred be for the purpose of enforcing a right, there may be a duty cast on the donee of the power to exercise it for the benefit of those who have that right when

required on their behalf": (Julius v Lord Bishop of Oxford [1874-80] All E.R. Rep. 43 at page 59).

[66] I conclude therefore that based on the nature of what Cabinet was empowered to do, the object for which it was to be done, the conditions under which it was to be done, and the persons for whose benefit the power was to be exercised, that Cabinet had a duty under Section 6A (1) to make an order to remove the difficulty if Mr. Cenac was an exceptional case, which order would modify Section 6 (1) of the amended 1990 Act as it applied to the re-calculation of Mr. Cenac's retiring allowance. The only real discretion Cabinet was given under Section 6A (1) according to my construction of the provision, having regard to the intention of Parliament, was as to the nature of the Order Cabinet considered necessary to make for the removal of the existing difficulty.

[67] In considering the third reformulated issue at paragraph 29 above, I wish to refer to the relevant facts for this issue stated at paragraphs 17 to 22 in this judgment.

The Retroactive Salary Increase

[68] The salary increase that became payable to Ministers of Government in May 2000 would normally affect the retiring allowances of Legislators who were former Ministers from the 23rd May 1996 since the increase was made retroactive for a period of one (1) year from the 23rd May, 1996 to the 23rd May, 1997.

[69] The Act relating to the Retiring Allowances for Legislators in May 1996 to May 1997, was the amended 1990 Act.

[70] The Act relating to the Retiring Allowances for Legislators in May 2000 was the 1999 Act.

[71] Since Mr. Cenac resumed his retirement in May 1997, the law to be applied in re-calculating his retiring allowances would normally be the law existing in May 1997.

[72] Mr. Cenac and his learned Counsel have contended that Mr. Cenac's retiring allowances should be re-calculated on the basis of the increased Minister's salary which became payable in May 2000 because it was made retroactive back to May 1996; and in May 1997 when Mr. Cenac resumed retirement he was an exceptional case, entitled to be treated like the retired Deputy Speaker of the House Mr. Alan Bousquet. Though Mr. Bousquet was a former Minister from 1982 to 1987, he retired in 1997 and got pension benefits as if he was a Minister earning the increased salary payable to current Ministers in 1997 which was $5040.00. In May 2000 when the Minister's salary was increased to $8624.17 monthly, Mr. Bousquet's pension benefits were again revisited and recalculated based on the $8624.17 payable to Ministers retroactively back to May 1996.

[73] The success or failure of this contention must necessarily depend on whether the 1999 Act, which was the Act in force in May 2000 when the salary increase became payable, is retrospect or has a retrospective effect.

[74] The learning in Craies on Statute Law, 7th ed (1971) at pages 387 to 393 and Maxwell on Interpretation of Statutes 11th ed, pages 205-215 were relied on by both Counsel in articulating their submissions.

[75] In Craies on Statute Law, the law is stated as follows: "A Statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past:" (at page 387).

[76] The general rule of law is that except there be a clear indication either from the subject matter or from the wording of a statute, the statute is not to receive a

retrospective construction. "In fact we must look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was the Legislature contemplated": (at page 388)

[77] Except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights. Retrospectivity may be expressed in Statute, or by necessary implication from the language used. The question in each case is whether the Legislature had sufficiently expressed that intention? (at page 390)

[78] A Statute is not to be read retrospectively except of necessity. Where a provision in the new enactment is a repetition of a provision in the repealed enactment, it can be said that the Legislature obviously intended to replace the old enactment at once by the new one, and that to that extent the provision in the new enactment must apply to transactions which took place before the commencement of the new Act. But where the provision in the new enactment, not only repeals the provision in the old enactment, but a new part is added to it, the new part may not be extended to antecedent transactions unless there is something in the context of the Act or the language or some other reason which might give to words a prima face larger operation: (at pages 392-393)

[79] In Re Asher (1887) 19 QBD. 186 at 195, Lord Esher opined:

> "I think therefore that so far as Section 47 of the Bankruptcy Act 1883 is a repetition of Section 91 of the Bankruptcy Act 1869 the Legislature obviously intended to replace the old enactment at once by the new one and that to that extent Section 47 must apply to transactions which took place before the commencement of the new Act." He held however that there was no reason to extend the new part of Section 47 to antecedent transactions."

[80] Ms. Cenac therefore argued that the following retrospective language in the 1999 Act demonstrates that this Act is retrospective in its operation:

(1) Section 2 – "legislative terms means the period commencing in the year 1954 from the date of a general election and expiring at the date of the next ensuing dissolution of Parliament"

(2) "Legislator means a person who has served or who is serving as a member of the House of Assembly or of the Senate"

(3) Section 3 (a) – "who was served as a Minister, for a period or periods of years ….."

(4) Section 3 (b) – "who has ceased to be a Minister or to hold an office described in subparagraph (b) before or after the commencement of this Act ...throughout the period served".

(5) Section 4 (1) – "where a legislator who would have been"

(6) Section 5 (a) – "has served as a member of the House of Assembly …"

(7) Section 8 (3) "… where a legislator has in the past occupied a post as Minister …."

[81] She concluded that, Mr. Cenac should benefit as contended since the Salary Review Commissions Report made the increase in a Minister's salary retroactive to the 26th May, 1996 and Ministers under the former administration were paid the retroactive increase and the language of the 1999 Act imports retrospection.

[82] On the other hand, Learned Counsel Mrs. Taylor-Alexander stressed the importance of Section 15 in the 1999 Act which states that "This Act shall be deemed to have come into force on the 1st day of January 1998." This clearly indicates that the 1999 Act has no general retrospective effect since the retrospective operation is limited to the 1st January 1998, she said.

[83] Since Mr. Cenac had retired on the 16th June 1997 she argued, he would not fall into the category of persons clearly intended to benefit by the current Act, in so far as it deals with retiring allowances.

[84] She relied on the case West vs Gwynne [1911] ChD 1 at pages 11-12 where Buckley L.J. explained the difference between "Retrospective operation" and "interference with an existing right" in the following words – "If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. …As an illustration take the case of a contract to pay money upon the event of a wager, or the case of an insurance against a risk which an Act subsequently declares to be one … [for] which the assured shall not have an insurable interest. In such a case, if the event has happened before the Act has passed, so that at the moment when the Act comes into operation a debt exists, an investigation whether the transaction is struck at by the Act involves an investigation whether the Act is retrospective …. But if at the date of the passing of the Act the event has not happened, then the operation of the Act in forbidding the subsequent coming into existence of a debt is not a retrospective operation but is an interference with an existing right in that it destroys A's right in an event to become a creditor of B."

[85] As for the examples of retrospective language in the Act, identified by learned Counsel Ms. Cenac, Mrs. Taylor-Alexander argued that these sections are so worded to refer to continuing rights or a right still being accrued, but they do not refer to a vested right or an accrued right. She concluded that where a Legislator has served a term entitling him on his retirement to a retiring allowance but because he/she is not yet entitled the right has not vested, in that case the legislation has a retrospective operation, but is not retroactive.

[86] I do not endorse the rebuttal argument of Counsel Ms. Cenac. She responded that since the retroactivity of the increase in Ministers' salary "went back to the time where the Ministers of the former administration sat in Parliament, it can be said to have revived the 1990 Act as amended, if only to allow the Ministers to retrieve their right under the said Act, which right would be carried over to the 1999 Act."

[87] In my opinion the examples mentioned in the 1999 Act as retrospective provisions speak only to the maturing rights of a legislator which have not yet vested, as Counsel for the Attorney General pointed out.

[88] Mr. Cenac's right to have his retiring allowances recalculated had already ripened and vested in May/June of 1997 on the dissolution of Parliament.

[89] I have particularly considered the impact of the authority Re Asher (1887) 19 QBD 186, 185) on this issue, and also the arguments of both Counsel concerning the relevance of Section 97(2) of the Constitution of St. Lucia to Mr. Cenac's case. I hold that Section 97 (2) applies to Mr. Cenac since he is included in the category of Public Officers referred to in Section 124 (2), of the Constitution.

[90] Section 97 (2) states that "The law to be applied with respect to any pensions benefits … shall:

(a) in so far as those benefits are wholly in respect of a period of service as a judge or officer of the Supreme Court or a Public Officer that commenced before the commencement of this Constitution, be the law that was in force at such commencement; and

(b) In so far as those benefits are wholly or partly in respect of a period of service as a judge or officer of the Supreme Court or a Public Officer that commenced after the commencement of this Constitution, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person."

[91] In light of this provision the law that was in force at the time when Mr. Cenac's pension benefits were due to be recalculated, is the law to be applied in this case.

[92] In my judgment, the words "at a later date" do not guarantee that if the law is changed ten times in ten years from the date the Legislator's retiring allowances became payable, that these benefits must be re-visited and recalculated on each occasion that the law has changed, or will change, provided it is more favourable to Legislators in similar circumstances, retiring under the new law. Where

Parliament intends that retired pensioners should benefit from an increase in their pension, it must say so in clear and unambiguous words.

[93] The words “at a later date”, relative to the words “on the date on which that period of service commenced”, in section 97(2)(b) of the Constitution, simply means the date when the retiring allowances become due and payable, in my opinion.

[94] Despite the authority Re Asher, it seems clear to me, in light of the other statements of the law, and my interpretation of the provisions of the Act, that Parliament did not intend the 1999 Act to have any general retrospective effect beyond that stated in Section 15 of the Act.

[95] This means therefore that Mr. Cenac would be only entitled to any retroactive increases in his salary as President of the Senate for the period 26th May 1996 to 26th May 1997 in my opinion.

[96] It follows therefore that his gratuity under Section 3 of the 1990 Act would not be affected by the retroactive salary increase, since the gratuity benefits were attached to his period of service as a former Minister, and Section 6A of the 1990 Act as amended, does not relate or should be applied to Section 3 of this Act.

The Bousquet Document Decision

[97] Regarding the fourth issue, I refer to my previous discussion of the law at paragraphs 63 to 66 above, concerning Cabinets power under Section 6A (1) of the amended 1990 Act.

[98] Since the law clearly provided for only the Cabinet to make an Order to remove the difficulty, in my opinion the automatic calculation of Mr. Alan Bousquet’s retiring allowance, on the basis of the current salary of a Minister in May 1997

when he retired was unlawful. Only Cabinet could make an Order to remove any difficulty where Mr. Bousquet was an exceptional case.

[99] The subsequent recalculation automatically by the Accountant General, without any reference to a Cabinet Order duly laid before the House of Assembly for approval, as contemplated by Section 6A and Section 8 of the respective Acts would also be unlawful.

[100] In fact, the retroactive salary increase could not by itself justify the recalculation of Mr. Bousquets' gratuity and pension benefits under Section 8 of the 1999 Act in light of my conclusions at paragraphs 89, 93, and 95 to 97 above. It would take a Cabinet Order or some other existing law for these to have been done lawfully in my view.

[101] In these circumstances therefore, the Court ought not to assist Mr. Cenac to benefit as Mr. Bousquet benefited by unlawful acts of the Accountant General.

[102] Turning now to consider the last issue I again refer to my deliberations concerning Section 6A (1) at paragraphs 59 to 61 above.

Cabinet's Exercise of Power

[103] Since at the time when Mr. Cenac resumed his retirement the salary attached to the post of a Minister was higher than the salary attached to the position of President of the Senate. Mr. Cenac would indeed be an exceptional case within the provision of Section 6A (3) of the amended 1990 Act.

[104] Since by my previous conclusions concerning Section 6A (1), I have found that the Cabinet had a duty to make an Order to remove the difficulty, where there was an exceptional case, and to decide what Order was necessary to remove the existing

difficulty, I must now examine how Cabinet exercised its discretion and carried out its obligations to Mr. Cenac.

[105] I have carefully examined the Affidavit of the Attorney General filed on the 17th October 2003 (see paragraph 24 (4) to (7) if this Judgment).

[106] In Associated Provincial Picture Houses Ltd. v Wedensbury Corporation [1947] 2 All E.R. 680 Lord Greene M.R. at pages 682-683 stated:

> "… a person entrusted with a discretion must direct himself properly in law. He must call his attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matters that he has to consider."

[107] Learned Counsel Ms. Cenac relied on the judicial statements in Padfield and Others v Minister of Agriculture [1968] 1 ALL E.R. 694 H.L., to support her submissions that the Cabinet exercised its powers unlawfully. In that case the Minister was of the view that he had an unfettered discretion to decide whether or not to refer a complaint to the Committee of Investigations under the Agricultural Marketing Act 1958, and he held the view that if the complaint was upheld by the Committee of investigation, he might be expected to make a Statutory Order to give effect to the Committee's recommendations. The Divisional Court made an Order of Mandamus, directing the Minister to refer to the Committee of Investigations appointed under Section 19, for their consideration and report, the complaint of the milk producers. The Court of Appeal set aside the Order of Mandamus. On appeal to the House of Lords the matter was remitted for the Court to require the Ministers to consider the milk producers' complaint. It was held that where a Statute conferring a discretion on a Minister to exercise or not to exercise a power, did not expressly limit or define the extent of the discretion, and did not require him to give reasons for deciding to exercise the power, his discretion might nevertheless be limited to the extent that it must not be used, whether by reason of misconstruction of the Statute or other reason, as to frustrate the objects of the statute which conferred it. The Minister was bound to exercise his power lawfully. He should neither misdirect himself in law, nor take into

account irrelevant matters, nor omit relevant matters from consideration. Though there may be a good policy reason for refusing an investigation, the policy must not be based on political considerations which are pre-eminently extraneous.

[108] "If the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then the law would be very defective if persons aggrieved were not entitled to the protection of the Court:" (Per Lord Reid at page 699 paragraph C-D.)

[109] I have considered the submissions of both Counsel concerning this issue. In my opinion it is quite clear from the Attorney General's Affidavits, and also from the Cabinet decision itself, that the Cabinet applied Section 8 (1) to Mr. Cenac's case, instead of applying Section 6A (1), (2),(3) and (4) of the amended 1990 Act. By so doing the Cabinet misinterpreted the law, and misdirected itself.

[110] The Cabinet as a consequence of their misinterpretation, failed to appreciate that they were required to consider under Section 6A, not only the prejudicial effect of being an exceptional case, for Mr. Cenac, but also any other effect that resulted from Mr. Cenac's retirement in the circumstances, which made him an exceptional case.

[111] It cannot be said therefore that the Cabinet used its powers and discretion to promote Parliament's intention.

[112] In considering what was necessary to remove the difficulty they were entitled to take into account that Mr. Cenac between 1992 and 1997 had unlawfully been receiving monthly pension payments while he was in receipt of a salary as a Senator and President of the Senate in my opinion. This would affect the nature and extent of Cabinet's Order to remove any prejudice or other effect.

[113] Learned Counsel Ms. Cenac submitted that these pension payments to Mr. Cenac were a mistake of law and not a mistake of fact.

[114] Mr. Cenac himself regarded the relevant Acts which allowed him to receive retiring allowances as a Parliamentary contract. He seems to have contemplated in his response to the Accountant General's letter dated 11th October 1993, that he could unilaterally vary this Parliamentary contract. It seems clear to me that the Accountant General knew what the law was, he was not mistaken as to the relevant law. I hold therefore that the unlawful pension payments to Mr. Cenac were obviously a mistake as to the facts and not as to the law.

The Certiorari Remedy

[115] Mr. Cenac is seeking an Order of Certiorari to quash the decision of the Cabinet dated the 5th March 2003.

[116] I have reminded myself that "…certiorari is limited to cases where the issue is a matter of law and then only when it is a matter of law appearing on the face of the Order" (Per Lord Widgery C.J. in R vs Hillingdon London Borrough [1974] 2 All E.R. 643 at 648).

[117] I have taken into account that "It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy": (Per Lord Widgery C.J. in R vs Hillingford supra at pages 648).

[118] I am of the view that the validity of the Cabinet's decision dated 5th March 2003 is a matter of law and that an error in law is reflected on the face of the record.

[119] There is no other hindrance in my opinion to make an Order of certiorari, so I will make the Order as claimed by Mr. Cenac.

Conclusion

THE COURT HEREBY MAKES THE FOLLOWING ORDER:-

(i) The Cabinet decision dated the 5th March 2003 is hereby quashed.

(ii) The Defendant shall pay costs to the Claimant to be agreed on by the parties pursuant to PART 65 5(2) (b) (ii) of the Civil Procedure Rules 2000.

(iii) In the absence of any agreement concerning the costs to be paid, the Court will determine the value of the Claim.

Dated this 1st day of June 2006.

Ola Mae Edwards
High Court Judge