ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2007/0354

BETWEEN

LENNOX LINTON

Claimant

And

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendant

Appearances:

Mr. John Fuller for the Claimant
Ms. Karen DeFreitas-Rait Deputy Solicitor General for the Defendant

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2008: October 20
December 17
2009: February 22
May 18
June 12
June 29
……

JUDGMENT

[1] Blenman J: Mr. Lennox Linton, a national of the Commonwealth of Dominica, has filed judicial review proceedings against the Attorney General as the representative of the State of Antigua and Barbuda. The proceedings are in respect of certain rights which, Mr. Linton claims, he enjoys by virtue of the Caribbean Community Single Market and Economy (CSME).

Introduction

[2] CSME

The CSME was established in 2001 with the adoption of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (the Revised Treaty *or* RTC). The Revised Treaty entered into force on 1 January 2006. The Heads of Government adopted the Revised Treaty in order to, among other things, provide for the creation of the CSME which was intended to facilitate the pooling of the region's financial, human and natural resources. The combining of these resources is meant to strengthen the capacity of the region to be better able to respond to the world economic environment. It is an arrangement that allows for CARICOM goods, services, capital and specified skilled workers to move throughout the Caribbean Community without restriction in order to achieve a single, large economic space. (This was before the economic downturn in the global economy). In this way the 2001 Revised Treaty went much further than the original 1973 Treaty of Chaguaramas which was concerned mainly with functional cooperation and the free movement of goods.

[3] One of the aims of the RTC is that specific qualified Caribbean persons who fall within limited categories of skilled workers should be able to seek employment in countries that are part of the CSME. University graduates, media workers, sportspersons, artistes and musicians are recognised categories under the RTC.

[4] Accordingly, Article 46 of the RTC, under the heading "Movement of Skilled Nationals", states as follows:

> "1. Without prejudice to the rights recognised and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions:
>
> (a) University graduates;
> (b) Media workers;
> (c) Sportspersons;
> (d) Artistes; and

(e) Musicians

recognised as such by the competent authorities of the receiving Member States.

2. Member States shall establish appropriate legislative, administrative and procedural arrangements to:

(a) facilitate the movement of skills within the contemplation of this Article;

(b) provide for movement of Community nationals into and within their jurisdictions without harassment or the imposition of impediments".

[5] The Heads of Government anticipated that supporting legislation would have been enacted in order to give efficacy to the RTC at the local level. It was their hope that other local laws would have been implemented in order to facilitate the movement of certain skilled CARICOM nationals without restriction. In fact, Article 9 of the Revised Treaty provides that Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising under this Treaty or resulting from decisions taken by the Organs and Bodies of the Community.

[6] Antigua and Barbuda is a party to the Revised Treaty.

[7] Background

Mr. Linton says that he came to Antigua and Barbuda in order to seek employment based on the legitimate expectation which he held as a result of statements made by Government Officials. The statements were to the effect that qualified skilled CARICOM nationals, and Mr. Linton is a CARICOM national, would be entitled to come to Antigua and Barbuda to work. He calls in his aid the RTC. He contends that he possessed a Caribbean Community Skilled Certificate issued to him by the Government of the Commonwealth of Dominica, which certifies him to be a media worker. He says he presented the Certificate to the then Chief Immigration Officer and was given permission to remain in Antigua for six months. Before the time granted to him had expired, the permission was unlawfully revoked and he was placed on a flight back to the Commonwealth of Dominica. He also says that this was in clear breach of his rights which are granted to skilled CARICOM nationals, pursuant to the

RTC. He further complains that the Immigration Authorities' conduct was in clear breach of law, namely the CARICOM Skilled Nationals Act Cap No.3 of 1997 Laws of Antigua and Barbuda and the Immigration and Passport Act Cap 208 Laws of Antigua and Barbuda (IP Act).

[8] He has therefore filed judicial review proceedings against the Attorney General and seeks damages and declarations. He also requests an order of certiorari to quash the decision to revoke his permission to stay in Antigua on the basis that it was unlawful, irrational and in excess of jurisdiction. Also, he seeks a declaration that he was expelled from Antigua and that his expulsion was unlawful. He further complains that this was in breach of his constitutional right and violated the provisions of the Caribbean Community Skilled Nationals Act No.3 of 1997, the Caribbean Community Act No.9 of 2004 and the IP Act. Further, he says that he was deported in clear breach of his legitimate expectation that he could remain in Antigua. In addition, he seeks damages on the basis that he was wrongfully deported.

[9] The Attorney General denies that the State has acted unlawfully. He says that general statements, if any, which were made by any government official, did not and could not create a legitimate expectation. The Attorney General further denies that Mr. Linton was entitled to remain in Antigua and Barbuda. He contends that while Mr. Linton was given permission to remain until August 2007, this permission was lawfully revoked. Thereafter, he was kept under surveillance and advised to purchase a one way ticket to the Commonwealth of Dominica, which he did. The Attorney General denies that Mr. Linton was forced to leave Antigua and Barbuda.

[10] Importantly, the Attorney General says that the RTC is not part of the domestic law of Antigua and Barbuda and therefore, Mr. Linton cannot rely on the RTC in support of any of his alleged rights.

[11] Further, the Attorney General states that the Caribbean Community Skilled Certificate, which Mr. Linton possessed, did not entitle him to remain in Antigua for any extended period of time. In fact, he argues, the Immigration Authorities had no authority to grant him permission

to remain in Antigua and Barbuda for 6 months. The Attorney General also says that there was no other basis for the Immigration Authorities to grant Mr. Linton permission to remain in Antigua and Barbuda for six months, since the Accreditation Board, as required by section 14(2) of the Accreditation Act No.4 of 2006, had not been established.

[12] In consequence, the Attorney General contends that once the relevant authorities had lawfully revoked the permission to remain in Antigua and Barbuda, as they did, they were entitled to request Mr. Linton to leave Antigua. From then onwards he was no longer lawfully in Antigua and Barbuda. If he had refused to leave, the Immigration Officials could have properly taken steps to arrest and deport him. Significantly, the Attorney General denies that Mr. Linton was either arrested or that he was forced to leave Antigua and Barbuda. The Attorney General contends that the decision to revoke the permission is not reviewable.

[13] Accordingly, the Attorney General says that Mr. Linton is not is entitled to obtain any of the reliefs for which he prays. Alternatively, he says that if the court were to find that indeed Mr. Linton was unlawfully removed from the jurisdiction, the court should only award him nominal damages.

[14] Issues

The issues that arise for the court to resolve are as follows:

(a) Whether any issue arises requiring the interpretation or application of the RTC;

(b) Whether, on entering Antigua and Barbuda, Mr. Linton was obliged to present the CARICOM Skilled Nationals Certificate to the Immigration Authorities;

(c) Whether Mr. Linton was entitled to remain in Antigua and Barbuda for six months, based on the permission he had obtained;

(d) Alternatively, whether Mr. Linton had a legitimate expectation that he would be allowed to remain in Antigua and Barbuda for the duration of the six (6) months, in order to seek employment;

(e) Whether the decision to revoke the permission that was granted to Mr. Linton is reviewable;

(f) Whether the permission to stay was lawfully revoked;

(g) Whether, in the circumstances that obtained, Mr. Linton was unlawfully removed/deported from Antigua;

(h) What are the remedies, if any, to which Mr. Linton is entitled.

[15] Evidence

Mr. Linton testified on his own behalf. Mr. John McKinnon Chief Immigration Officer (ag) and Mr. Raphael Agnell Supervisor of Immigration testified on behalf of the Crown.

[16] Mr. John Fuller's submissions

Given the heavy reliance by Mr. Linton on the RTC to buttress his claim, the court invited Mr. Fuller to address the issue of whether there were any matters of the interpretation or the application of the RTC that arose in these proceedings. Learned Counsel Mr. Fuller was adamant that there is no issue that arises regarding the interpretation or application of the RTC. He asserted that the issue which connects the case at bar with the RTC is whether by virtue of its enactment into domestic law, it gives rise to a legitimate expectation. There is no question that it does not, he asserted. He was of the view that the RTC does in fact create rights which the defendants have clearly breached. He was clear that the case at bar does not give rise to any issue that required the interpretation or application of the RTC.

[17] Right to remain

Learned Counsel Mr. Fuller submitted that Mr. Linton, as the holder of a certificate of recognition of Caribbean Community Skills Certificate and by virtue of the RTC and the Caribbean Community Skilled National Act and the Caribbean Community Act No.9 of 2004, was entitled to free movement within CARICOM, together with the right to seek and obtain employment within his profession. By Article 46 of the RTC, the Government of Antigua and Barbuda afforded media workers the right to move and seek employment within the jurisdictions of Antigua and Barbuda and the Commonwealth of Dominica. Mr. Linton is a media worker. On the basis of the RTC and the two Acts, Mr. Linton resided in Antigua and Barbuda with his family and was granted permission, by way of a valid residence stamp which was placed in his passport and was to expire (notwithstanding his right under the RTC and the Acts to remain indefinitely) on the 5th day of August 2007.

[18] Mr. Fuller directed the court's attention to the preamble of the Caribbean Community Skilled Nationals Act, which states that it is an Act "to remove the restrictions on the entry into Antigua and Barbuda of skilled nationals of qualifying Caribbean Community states". The intention and spirit of the Act can be gleaned from this preamble and it is clear that the Act is intended to facilitate the movement of specified persons from specified Caribbean states into Antigua and Barbuda. Learned Counsel Mr. Fuller said that it should be noted from the outset that Schedule I of the Act lists the Commonwealth of Dominica as one of the qualifying Caribbean Community states. Section 4 of the Act makes provision for indefinite entry of Caribbean Community skilled persons while section 5 makes provision for entry into Antigua and Barbuda of qualified persons for a period of six months in order to seek employment.

[19] Mr. Fuller said that section 5 of the Act is of direct relevance in the case at bar. By virtue of Section 5(2) entitles a person "who is the holder of a passport issued by a qualifying state, who was born in that or another qualifying state, who presents on entry to Antigua, a certificate issued by the government of a qualifying state, which certifies that the holder of the passport does in fact have the required qualifications which satisfy the conditions for recognition of Caribbean Community skill qualification to obtain a certificate". Section 5(1) stipulates that once the above mentioned conditions are satisfied, an immigration officer shall permit the holder of the certificate to enter Antigua and Barbuda for six months.

[20] Learned Counsel Mr. Fuller urged the court to find as a fact that Mr. Linton is a media specialist who possessed the requisite qualification which entitled him to be permitted to enter Antigua and Barbuda as a skilled Caricom worker pursuant to the RTC. It was as a consequence of meeting that requirement that he was granted permission by the Immigration Authorities to remain in Antigua. There are two points which must be noted from section 5(1). Firstly, the use of the word 'shall' as opposed to 'may' and secondly, the last three words, i.e. 'for six months', while it could quite easily have read for 'up to' six months, it does not. The presence (and omission) of these words, makes it abundantly clear that this section affords

no discretion to refuse to grant the certificate holder six months 'stay' in the country, once the pre-conditions are met, this is mandatory.

[21] Elaborating further, Mr. Fuller urged the court to accept Mr. Linton's evidence that upon the presentation of the requisite certificate to the then Chief Immigration Officer Colonel Walker, he was informed that he was entitled to remain in Antigua for six months and as such he was duly granted 6 months to remain in the country. This permission was to expire on the 5th day of August 2007. This was approximately two months after Mr. Linton's "deportation" from Antigua.

[22] Presentation of Certificate

Turning his attention to whether Mr. Linton was required to present the Caribbean Community Skilled National Certificate on entering Antigua and Barbuda, learned Counsel Mr. Fuller said that the only technical issue which might be raised is the fact that Mr. Linton presented his certificate to the Chief Immigration Officer a couple weeks after his physical entry into Antigua. Mr. Fuller said that to argue or labour this point would be contrary to the clear spirit of the legislation, in light of the express, mandatory nature of the provisions in the Caribbean Community Skilled National Act generally. He asked the court not to place much store on the fact that the Certificate may have been presented some weeks after he entered the country and not at the time of entering Antigua. Nevertheless, Mr. Fuller was adamant that Mr. Linton's certificate was properly presented and appropriately received.

[23] Reviewability of decision

Mr. Fuller further advocated that the decision to revoke Mr. Linton's permission to remain in Antigua is reviewable. The court ought to bear in mind that the decision maker is obliged to act in a manner which promotes or furthers the objectives of the legislation which governs a given issue. He referred the court to Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 998 HL and more recently R v Secretary of State for the Home Department ex p Brind [1991] 1 AC 696 HL. The authorities make it clear that the decision maker ought not to act in a manner which would in effect frustrate the intention/spirit of the Act.

[24] Next, Mr. Fuller referred the court to section 10 of the Caribbean Community Skilled Nationals Act which deals with the effect of the certificate. In particular, subsection (c) states that the holder of a certificate who is allowed to enter under section 5 shall: "not be subject to any restriction on the right to engage in gainful employment or other occupation". Learned Counsel Mr. Fuller said that this subsection is of particular relevance to the case at bar as the only reason which Mr. Linton was given for his deportation was that he was 'suspected of working'. Section 10(c) however puts an end to the assertions that he was wrongfully working. While Mr. Linton maintains that he was not engaged in any form of employment, this section makes it clear that in any event if he was so engaged, he was specifically authorised by statute to do so without restriction. As such, if this is the reason why Mr. Linton was expelled from Antigua and Barbuda, then this is in clear and direct contravention of the statutory provisions. Additionally, this would indicate that the decision maker took into account what can only be described as a wholly irrelevant consideration, i.e. whether or not Mr. Linton was engaged in employment. Learned Counsel Mr. Fuller therefore said that the decision making process was also flawed in this regard and that this, even on its own, ought to invalidate the decision. See Re Findlay [1985] AC 318, CCSU V Minister of State for the Civil Service [1985] AC 374, HL.

[25] In further support of his contention, Mr. Fuller also adverted the court's attention to section 12 of the Act which provides that (except in limited circumstances, none of which are applicable) the right to enter and remain as granted under section 5(1) shall be "irrevocable during the duration of the permission except for cause and by procedure". This provision adds further credence to the spirit of the legislation and the sanctity in which the provisions are held.

[26] Arrest and Unlawful removal

Next, Mr. Fuller maintained that Mr. Linton's removal from Antigua was clearly against his wishes and rights. The forcible removal of a person from the State of Antigua and Barbuda can be lawfully achieved only pursuant to the provisions of the IP Act by a hearing before a Magistrate who is required to make a judicial determination on the issue of deportation. This

did not occur, neither was he given a hearing. Accordingly, learned Counsel maintained that Mr. Linton was deported in clear breach of the IP Act and is therefore entitled to be compensated for his unlawful deportation.

[27] Whether the permission could be revoked

Mr. Fuller argued that the permission to remain in Antigua and Barbuda for 6 months could not be revoked, or even if it could have been revoked it could not be done in circumstances in which the decision maker took into account any 'suspicion' that Mr. Linton was working, when in fact, if this were the case, Mr. Linton was lawfully entitled to do so. It is therefore clear that this would have been an irrelevant consideration to take into account and also indicates that the decision maker failed to take into account the specific relevant statutory provisions. He maintained that the decision to revoke the permission that was granted to Mr. Linton was irrational.

[28] Additionally, however, Mr. Fuller said that the decision maker failed to take account of relevant considerations; namely that Mr. Linton was lawfully in the country at the time, with a valid stamp in his passport and further that this permission to remain in the country could only have been revoked in limited specified circumstances as provided for in sections 12, 14 and 16 of the Caricom Skilled Nationals Act. Accordingly, the decision to revoke the permission was invalid, said Mr. Fuller.

[29] Legitimate Expectation

Next, Mr. Fuller asked the court to find that in any event, when Mr. Linton was granted permission to remain in Antigua and Barbuda, he had a legitimate expectation that he would have been allowed to remain for the entire period. He says that in any event, this would raise the counter issue as to the reasonableness of Mr. Linton's reliance on the then Chief Immigration Officer's act and whether this gave rise to a legitimate expectation on the part of Mr. Linton. He emphasised that Mr. Linton still had approximately two more months during which he could have lawfully remained in Antigua, pursuant to the permission granted to him by the then Chief Immigration Officer under section 5(1) of the Act. The purported 'cancellation' (with or without prejudice) of Mr. Linton's permission to remain in the country is,

in light of the above provision, clearly unlawful on the face of it. The section expressly calls for due process to be observed. This was not done. Mr. Linton was only informed of the general nature of the reason for his deportation after he had already been made to purchase his one way ticket. He was given no opportunity to be heard, so as to contradict any of the allegations, he was not charged with any offence under any statute and was not brought before any court of law. His legitimate expectation was clearly violated.

[30] Revised Treaty of Chaguaramas

Learned Counsel Mr. Fuller stated that the Caribbean Community Act No.9 of 2004 is described in the preamble as an Act to give effect to the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Caricom Single Market and Economy. By section 3 of and the Schedule to the Act, the RTC was enacted into law in Antigua and Barbuda and Mr. Linton was as such entitled to rely on the provisions of the RTC for the full force and effect.

[31] At this juncture, it is pertinent to state that the defendant, having taken issue with whether the RTC is part of the local law, the court granted Mr. Fuller several opportunities to provide proof that the Caribbean Community Act No.9 of 2004, which should bring into force the RTC, is part of the domestic law. Despite several indulgencies learned Counsel has not provided the court with any such proof. He nevertheless argued that section 5(1) of the Act stipulates that the Minister "shall take the necessary steps to ensure that the Government takes appropriate measure for facilitating the exercise of rights and privileges and for the implementation of obligations provided for in or arising from, the Treaty." Learned Counsel Mr. Fuller then stated that by virtue of the statutory provisions, along with the fact that the Chief Immigration Officer (ag) had granted Mr. Linton 6 months to remain in the country, which time would not have expired until approximately two months after Mr. Linton's deportation, Mr. Linton did in fact have a legitimate expectation to remain in Antigua until the 5th day of August, 2007.

[32] In support of his proposition, Mr. Fuller referred the court to R (Bibi) v Newham LBC [2002] 1 WLR 237 in which the Court of Appeal identified three questions which would fall for determination in all cases concerning the breach of a legitimate expectation:

(1) To what has the public authority, whether by practice of by promise, committed itself?

(2) Has the authority acted or does it propose to act unlawfully in relation to its commitment?

(3) What should the court do?

In respect of the first question above, Mr. Fuller emphasised that in the case at bar, there was a commitment on the part of the Immigration Department to allow Mr. Linton to remain in the country for 6 months, ending 5th August 2007. The undisputed practice is that when an individual receives in his passport, a valid stamp from the Immigration Department, he is entitled to remain in the country until the expiration of the time, unless the person is found guilty of committing certain offences. As such, Mr. Linton was entirely reasonable in his expectation that he, having committed no offence, would also be so entitled to remain in the country until, at the very least, the expiration of the time granted him. Learned Counsel Mr. Fuller said that the answer in respect of question 2 above is an emphatic yes. The Immigration Department has clearly acted contrary to Mr. Linton's legitimate expectation.

[33] The final, crucial question that remains, is what ought the court to do in these circumstances? The overriding question which the court ought to bear in mind in this category of cases is whether "the application of the policy to an individual who has been led to expect something different is a just exercise of power". See R v North East Devon Health Authority ex p Coughlan [2001]. See also Robert Perekebena Naidike et al v The Attorney General of Trinidad and Tobago, Privy Council Appeal No.10 of 2003. He said that the central focus of the courts in these circumstances is the fairness of the departure from legitimately expected policy. It is for the court to determine whether the "frustration of the individual's expectation is so unfair as to be a misuse of the authority's power". Learned Counsel Mr. Fuller therefore submitted, that in the case at bar, the court ought to intervene: to find that the deportation of Mr. Linton was unlawful, unfair and a misuse of the authority's

power. For reasons propounded, justice demands that the court quash the decision to deport Mr. Linton and to award him the remedies as claimed.

[34] Remedies

Learned Counsel Mr. Fuller reinforced his position that Mr. Linton was entitled to remain and work within the state of Antigua and Barbuda. He urged the court to order certiorari to quash the decision to revoke the permission and to award Mr. Linton damages for being sent out of Antigua before the expiration of the time permitted had expired. He is also entitled to the declarations that he has sought. The court pauses to observe that even though Mr. Fuller urged the Court to award Mr. Linton damages for the alleged wrongful deportation, despite several requests from the court for learned Counsel to provide authorities on the measure or quantum of damages that should be awarded to Mr. Linton, none was forth coming.

[35] Deputy Solicitor General Ms. Karen DeFreitas-Rait's submissions

Learned Deputy Solicitor General Ms. DeFreitas-Rait admitted that Mr. Linton's permit was cancelled but denied that he was either deported or expelled from Antigua and Barbuda. Rather, the Deputy Solicitor General Ms. DeFreitas-Rait says, upon cancellation of his permission, Mr. Linton made expeditious arrangements to avoid any or any further contravention of the law, by freely purchasing a ticket and choosing to leave the country in order to comply with the law. Had he not chosen to leave the country when he did, he would have committed or continued to commit a criminal offence under sections 14(6) and (7) of the IP Act.

[36] Revised Treaty of Chaguaramas

Ms. DeFreitas-Rait submitted that the RTC has effect only in international law, as an agreement between nations, because it has never been incorporated into the laws of Antigua and Barbuda. The Caribbean Community Act No.9 of 2004, upon which Mr. Linton relies as evidence of the RTC's incorporation into domestic law, has not yet come into operation in accordance with section 1 thereof. Section 1 states that the Caribbean Community Act "shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint". Mr. Linton has provided no evidence of such publication. Ms. DeFreitas-Rait stated

that, in fact, no such notice of operation has ever been published, such that the Caribbean Community Act is not yet law.

[37] Harnessing her arguments, Ms. DeFreitas-Rait said that section 3(3) of the Ratification of Treaties Act, Cap 364 provides that: "No provision of a treaty shall become, or be enforceable as, part of the law of Antigua and Barbuda except by or under an Act of Parliament".

[38] Ms. DeFreitas-Rait asserted that in so far as Mr. Linton relies upon the RTC as a source of domestic law, the burden of establishing that it has been incorporated as part of the laws of Antigua and Barbuda falls squarely upon Mr. Linton. However, he has failed to discharge that burden. Accordingly, Ms. DeFreitas-Rait invited the court to find that the Caribbean Community Act is not law and that section 3 thereof is of no effect. Rather, the RTC is governed strictly by international law and learned Deputy Solicitor General Ms. DeFreitas-Rait submitted that the court has no jurisdiction to adjudicate rights allegedly arising thereunder.

[39] To buttress her argument, Ms. DeFreitas-Rait referred the court to Attorney General and Others v Joseph and Boyce (2006) 69 WIR 104, the learned Justices of the Caribbean Court of Justice (CCJ) analyzed in great detail the development of the law as it relates, inter alia, to:

(i) The effect on domestic law of unincorporated, ratified treaties, and more importantly, the circumstances in which a legitimate expectation can be derived from an unincorporated, ratified treaty; and

(ii) The justiciability of the prerogative of mercy.

[40] Ms. DeFreitas-Rait said that although the ultimate decision is Attorney General and Others v Joseph and Boyce ibid was unanimous, a total of six separate judgments were rendered by each of the learned Justices allowing for extensive judicial commentary on the relevant law.

[41] Referral to CCJ

Ms. DeFreitas- Rait submitted that there can be no basis upon which to refer an issue to the Caribbean Court of Justice under Article 214 of the RTC. The RTC is at best an unincorporated agreement. The question of whether or not there should be a referral of any issue to the CCJ as required by Article 214 of the RTC, does not arise because there can be no issue properly before this court in relation to an unincorporated international agreement. At the heart of Ms. DeFreitas-Rait's argument is the fact that, even if the court may look at an unincorporated treaty, Ms. DeFreitas-Rait said that it may only do so for the limited purpose of determining whether the terms of the RTC amounted to a representation by the Executive giving rise to a legitimate expectation. However, even in such a case, the court would not require an interpretation of the RTC. Rather, the court's only interest in the RTC would be to determine whether its words could form the basis of a representation upon which Mr. Linton relied.

[42] Ms. DeFreitas-Rait highlighted that the CCJ took a strong position that mere "ratification of a treaty or convention which was not incorporated into national law did not itself make processes pursued under that treaty or convention part and parcel of the national criminal justice system, even on a temporary basis; accordingly, such processes did not become part of 'due process' or 'the protection of the law' guaranteed by the Constitution". (See Attorney General and Others v Joseph and Boyce ibid at page 107d). This is contrary to the majority position taken by the Judicial Committee of the Privy Council in the cases of Thomas v Baptiste (1999) 54 WIR 387 and Lewis, Taylor, McLeod, Brown, Taylor and Shaw v Attorney General (2000) 57 WIR 275.

[43] Ms. De Freitas-Rait posited that the CCJ's disapproval of the Judicial Committee of the Privy Council's reasoning in both Thomas v Baptiste and Lewis, Taylor, McLeod, Brown, Taylor and Shaw v Attorney General ibid should be adopted because it is consistent with the leading House of Lords authority in civil case R v Secretary of State for the Home Department ex parte Brind [1991] 1 AC 696. Ms. DeFreitas-Rait said that Brind determined that unincorporated treaties are acts of the Executive which cannot be imported into domestic law in dualist jurisdictions without an express Act of Parliament. To this extent

Attorney General and Others v Joseph and Boyce ibid and R v Secretary of State for the Home Department ex parte Brind ibid are consistent. Accordingly, she commended that approach to the court as the law on the domestic effect of unincorporated treaties. Thus, as it relates to the case at bar, the RTC is not enforceable as domestic law, either directly or indirectly, unless and until it is incorporated by an Act of Parliament, a process which has yet to take place.

[44] Presentation of Certificate

Laying the foundation for her argument, Ms. DeFreitas-Rait said that the court must examine whether the certificate presented by Mr. Linton include certified "qualifications which satisfy the conditions for recognition of Caribbean Community skills qualification". Ms. DeFreitas-Rait submitted that it did not. Section 8 of the Caribbean Community Skilled Nationals Act defines the relevant qualifications of the Act. Learned Deputy Solicitor General posited that in order for Mr. Linton's certificate to have met the requirements of section 5 (2), it would have had to certify its holder as possessing one or more qualifications listed in section 8(1) as at February 2007. Mr. Linton's Dominican certificate lists his qualifications as "Leadership and Management experience in print and broadcast". A review of section 8(1) reveals that this is not a qualification under the Caribbean Community Skilled Nationals Act and therefore that qualification would not entitle him to protection under section 5(1). Thus, on 5th February, 2007 when the then Chief Immigration Officer granted him a permit to remain in the country until 5th August, 2007, he was neither mandated nor empowered so to do by section 5(1) of the Caribbean Community Skilled National Act because Mr. Linton had failed to fulfill the requirements of section 5(2). Similarly, Mr. Linton was not entitled to any rights/protections conferred by sections 10(2) and 12 of the Caribbean Community Skilled Nationals Act since those rights are made expressly contingent upon the application of section 5(1).

[45] Learned Deputy Solicitor General Ms. DeFreitas-Rait said that section 5(2) of the Caribbean Community Skilled Nationals Act sets clear parameters for the application of section 5(1), namely that the latter applies only to certain individuals who meet the requirements of sections 5(2) (a) and (b). It is undisputed that Mr. Linton met the requirements of section 5(2) (b) but Ms. DeFreitas-Rait said that he did not meet the requirements of section 5(2) (a).

Further, Mr. Linton made no mention in either of his affidavits of having presented the certificate upon entry to Antigua on 10th January, 2007. Learned Deputy Solicitor General Ms. DeFreitas-Rait therefore invited the court to find that Mr. Linton did not in fact present such a certificate to immigration officials "on entry to Antigua and Barbuda" as required by section 5(2) (b). Accordingly, section 5 (1) cannot apply to Mr. Linton because he presented the certificate some four weeks after entry into the country (on 5th February, 2007 at Immigration Headquarters), at which point he could no longer properly rely on section 5(1).

[46] Moving along, Ms. DeFreitas-Rait argued that section 5(1) only applies if the certificate holder presents the certificate upon entry at the port because to hold otherwise would mean that if a Caricom national entered the country and received a visitor's permit, then stayed in the country beyond the expiration of that permit, that visitor could avoid prosecution for that contravention of the IP Act merely by later obtaining and presenting a skilled nationals certificate and demanding a permit for six months. In addition, Ms. DeFreitas-Rait said that Mr. Linton has a second hurdle in respect of section 5. The certificate required by section 5(2) (b) is one "issued by the Government of a qualifying Caribbean Community state in that state's equivalent form to the form in Schedule II certifying that the holder of the passport is recognised by the Government of that qualifying Caribbean Community state as holding qualifications which satisfy the conditions for recognition of Caribbean Community skills qualification".

[47] Ms. DeFreitas-Rait asserted that since Mr. Linton did not satisfy the qualification requirements under section 8(1), it is clear from the wording of section 7 that he would not have qualified to receive an Antigua and Barbuda Certificate under section 7(1) in the form of Schedule II. Similarly, without a Schedule II Certificate, he would not have qualified for any rights or privileges listed in sections 10(1) and 12. It is the Schedule II Certificate issued by the Government of Antigua and Barbuda which is the only basis upon which an individual becomes entitled to an indefinite stay in accordance with the Caribbean Community Skilled Nationals Act. Mr. Linton has, not only ever received such a certificate, but more importantly, he was not at any material time entitled to one because he did not meet the section 8(1) requirements.

[48] Deputy Solicitor General Ms. DeFreitas-Rait was adamant that Mr. Linton had no right under the IP Act to an extended permit. The permit which was granted to him on 5th February, 2007 to remain in the country until 5th August, 2007 was purely discretionary because he was to have been treated "as if he were entering Antigua and Barbuda for the first time", that is to say, section 21 of the IP Act applied to him on that occasion. The width of the Chief Immigration Officer's discretion is especially made clear by section 21(7) which provides that: "The Chief Immigration Officer or any immigration officer authorised in writing by the Chief Immigration Officer may in any case either withhold any permission or, as the case may be, grant any permission subject to any duration, condition or limitation without assigning any reason for that decision."

[49] Revocation of Permit

Next, the learned Deputy Solicitor General Ms. DeFreitas-Rait submitted that the cancellation of the permit was a lawful decision within the discretion of the Minister responsible for immigration and that is an executive decision under the terms of the IP Act. Further, section 23 of the IP Act provides that such a permit:

> "may at any time be revoked by the Minister [with responsibility for Immigration matters] or by the Chief Immigration Officer acting on the direction of the Minister."

[50] Ms. Defreitas-Rait stressed that this is true even in the case of individuals who are citizens of an O.E.C.S state as Mr. Linton. In fact, the continued validity of a permit issued to an O.E.C.S. national is expressly made conditional upon such revocation by section 14(8) of the IP Act by the words "unless such permit to remain in Antigua and Barbuda is revoked under section 23." Accordingly, Deputy Solicitor General Ms. DeFreitas-Rait submitted that the Minister, acting through the Chief Immigration Officer was, by the IP Act, specifically empowered to revoke his permit. Deputy Solicitor General Ms. DeFreitas-Rait asked the Court to find that the decision was made regularly in accordance with the provisions of section 23 of the IP Act.

[51] Arrest and Expulsion

The Deputy Solicitor General Ms. DeFreitas-Rait maintained that there was never any decision taken by anyone to expel or deport Mr. Linton. Upon revocation of his permit, he had an obligation in accordance with section 14(6) and (7) of the IP Act to leave Antigua and Barbuda, failing which he would have been guilty of an offence under the following sections:

"14. (6) Any person who shall remain in Antigua and Barbuda after the expiration or cancellation of any permit shall be deemed to have landed in Antigua and Barbuda contrary to the provisions of this section.

(7) Any person who lands in Antigua and Barbuda in contravention of this section shall be guilty of an offence against this Act."

However, Ms. DeFreitas-Rait denied that Mr. Linton was ever detained or arrested at any material time. Even though, she stated that by section 23(2) of the IP Act:

> "Where a permit is revoked, the immigrant may be arrested and brought before a Magistrate's Court which shall deal with the immigrant according to law: Provided that the court may if the permit was not revoked by or by the direction of the Governor-General, order the permit to be restored and the immigrant to be released."

[52] Accordingly, Ms. DeFreitas-Rait asserted that it was well within the discretion of the then Chief Immigration Officer, and indeed of the officers conducting the surveillance, to have arrested Mr. Linton upon cancellation of his permit even though she was adamant that he was never arrested. However, since the Immigration Officials were empowered to so arrest, any alleged arrest would in any event have been lawful. Ms. DeFreitas-Rait asserted that notwithstanding the power to arrest, Deputy Solicitor General Ms. DeFreitas-Rait submitted that where it appears to immigration authorities that a person whose permit has been revoked intends to comply with the law by leaving the country, the authorities are under no obligation to arrest, charge and seek a hearing before a Magistrate. It is evident from section 3(6) that the decision to arrest is entirely within their discretion in such cases. Accordingly, the immigration officials did nothing wrong in allowing Mr. Linton to leave the country while keeping him under close surveillance rather than arresting and charging.

[53] Ms. DeFreitas-Rait denied that Mr. Linton was ever arrested. She said that in considering this question of fact, Ms. De Freitas-Rait asked the court to consider that at all times Mr. Linton made his own airline travel arrangements and had the use of his cell phone for the entire period of surveillance. When he was first contacted by immigration officials, he even admitted that he took a shower before accompanying them to the Immigration Headquarters and took time to pack. Further, he admitted in oral testimony that he continued throughout the afternoon in question to use his cell phone freely, receiving "quite a few phone calls". He stated that he didn't "recall being restricted" in this regard. The mere fact that Mr. Linton was aware that he was under surveillance does not mean that he was detained.

[54] Even if the court were to find that there had been an arrest, it would have been lawful by virtue of section 23(2) of the IP Act:

> "Where a permit is revoked, the immigrant may be arrested and brought before a Magistrate's Court which shall deal with the immigrant according to law; Provided that the court may, if the permit was not revoked by or by the direction of the Minister, order the permit to be restored and the immigrant to be released."

The immigration officer's powers of arrest in these circumstances where Mr. Linton remained in the country after cancellation of his permit are clearly specified in sections 14(6) and 14(7) and again in sections 3(5) and 3(6) of the IP Act.

[55] Reviewability of decision to revoke the permit

Learned Deputy Solicitor General Ms. De Freitas-Rait forcefully argued that the power to revoke a permit under section 23 of the IP Act is an executive power not a judicial or legal one because it is vested in the Minister as part of the Crown's prerogative. Where an executive decision is taken, the affected person does not, without more, have a right to be heard or to know the reasons for the decision, and there can be no legitimate expectation of a hearing. The executive decision is immune from substantial challenge by way of judicial review and the affected person does not have the right to be heard or to know the reason for the decision.

[56] Ms. De Freitas-Rait invited the court to find that, in any event, all permits issued under section 21 and 22 of the IP Act are subject to revocation. To say otherwise would be to render section 23 of the IP Act completely impotent. That being the case, Mr. Linton could not legitimately expect anything, merely on the basis of a permit. This is true in the case of individuals who are citizens of Caricom states such as Mr. Linton. In fact, provision for revocation of a permit issued to a Caricom national is expressly provided for by section 14(8) of the IP Act in cases where "such permit to remain in Antigua and Barbuda is revoked under section 23". Ms. De Freitas-Rait therefore submitted that the Chief Immigration Officer was, by the IP Act, specifically empowered to revoke Mr. Linton's permit, upon the directions of the Minister, and was not require to give notice of or reasons for such revocation. The directions for the revocation of Mr. Linton's permit, as required by section 23 of the IP Act, came from the Minister with responsibility for immigration matters.

[57] Ms. DeFreitas-Rait posited that immunity of executive decisions in immigration is well established by the Court of Appeal (see England v AG of St. Lucia ante at page 179-181 and the unreported Grenadian case of The Minister of Immigration and the Chief Immigration Officer v Sharon Nettlefield and Beat Wild, unreported Civil Appeal No 6 of 2002, at paragraph 29-38 and further at paragraphs 57-64).

[58] Legitimate Expectation

Turning to the issue of legitimate expectation, Ms. DeFreitas-Rait submitted that Attorney General and Others v Joseph and Boyce ibid went further than R v Secretary of State for the Home Department ex parte Brind ibid to consider the possibility of a legitimate expectation being derived from ratification of a treaty. Hence, though a treaty has no effect in domestic law, there are circumstances in which ratification of a treaty may be considered in determining whether there has been a representation made from which a legitimate expectation could properly arise. In summary the CCJ found that the ratification of a treaty can form the basis of a legitimate expectation where the Executive has engaged in "treaty-compliant conduct".

[59] In this regard, the decision in Attorney General and Others v Joseph and Boyce ibid reaffirmed the tests for legitimate expectation that was propounded in R v North and East Devon Health Authority ex parte Coughlan [2001] QB 213. More importantly, it confirmed the need to identify a clear and unequivocal representation upon which to ground a legitimate expectation, as well as the need to balance that expectation against all relevant and potentially overriding, public interest issues. Thus an alleged expectation would only be upheld in law if to frustrate it would be "so unfair as to constitute an abuse of power". (See Attorney General and Others v Joseph and Boyce ibid at page 107a-d). She maintained that "legitimate expectations sought to be relied on as a basis of judicial review must emanate from an unequivocal and unambiguous representation, expressed or implied, of a public authority indicating the manner of employment of executive discretionary powers", Attorney General and Others v Joseph and Boyce ibid at page 108e.

[60] In fact, the learned Nelson J enunciated that "the mere ratification of a treaty was not enough to ground a legitimate expectation". Rather, "treaty-compliant conduct of the executive at the municipal plane is necessary to establish a 'foothold' as the basis of curial intervention at this level in order to protect the expectation engendered"; Attorney General and Others v Joseph and Boyce ibid at page 183g. Further, in Attorney General and Others v Joseph and Boyce ibid a legitimate expectation was found specifically because the ratification of the American Convention on Human Rights by Barbados has been "coupled with positive statements by representatives of the executive arm of Government evincing an intention or desire on the part of the executive to abide by the Convention, and the practice to international human rights bodies processed before proceeding to the execution of their sentences". Attorney General and Others v Joseph and Boyce ibid at page 107f-h.

[61] Elaborating further, Nelson J stated that the "decision in Teoh's case cannot be regarded as requiring all legitimate expectations to be treated as homogeneous". Thus, while "legitimate expectations engendered by treaty-compliant executive conduct", and more particularly expectations arising in death penalty cases, may be " 'sui generis' requiring the highest standard of curial protection, if any". See Attorney General and Others v Joseph and Boyce ibid at page 191h-192b.

[62] The requirements for grounding a legitimate expectation were further expounded in the judgments of learned Justices de la Bastide and Saunders J who at page 146g-j indorsed the decision of Lord Bingham in R v Director of Public Prosecutions ex parte Kebilene [2000] 2 AC 326 and [1999] EWHC Admin 278. Lord Bingham held that no legitimate expectation could have arisen from the mere ratification of the unincorporated European Convention for the Protection of Human Rights "because when the Convention had been ratified over 50 years previously it was never assumed that such ratification would have had any practical effect on British law and practice. Moreover, the terms of the Act that had since been passed to incorporate the Convention but which had not yet been brought into force, expressly contradicted any such expectation". Attorney General and Others v Joseph and Boyce ibid at page 146g-j.

[63] Further, Ms. DeFreitas-Rait asserted that no legitimate expectation can properly arise in the case at bar. In support of her assertion, she referred the court to R v Director of Public Prosecutions ex parte Kebilene ibid, in which Lord Bingham further explained the court's position as follows:

> "In my judgment, such an expectation is contradicted by the express terms of the Act. Parliament has thought it right, for readily understandable reasons, to stipulate that the central provisions of the Act shall not come into force on the passing of the Act but on a later date to be appointed by the Secretary of State. If Parliament had intended the whole Act to take effect upon its receiving the Royal Assent, it would have so provided. It did not do so. It would in my view fly in the face of the clear legislative intention of Parliament if the central provisions of the Act were to be treated, in a case such as the present, as having immediate effect when the Act itself provides that they shall not. This seems to me to be a case in which, applying the language of Teoh, there is a clear statutory indication to the contrary of the legitimate expectation contended for."

[64] In view of the above principles, Ms. DeFreitas-Rait advocated that to ground a claim for legitimate expectation, the alleged expectation must be based upon a clear and unequivocal representation by the appropriate public body. Further, there is no course of conduct upon

which Mr. Linton can properly rely. Prior to December, 2006, the evidence is that his situation was significantly different in that he had always lived in the country while working under a work permit or awaiting renewal of such work permit. However, once he arrived in the country in January, 2007 his status changed. He was no longer employed and had no work permit which might lead him to believe that he would be allowed to continue to stay in the country. Ms. DeFreitas-Rait adverted the court's attention to the fact that Mr. Linton has failed to provide any evidence of a representation made to him by the Crown or by servants of the Crown which would lead him to believe that he held a special permit that could not or would not be revoked. The permit granted to him was not different or special in any way from any other permit granted under section 22 of the Immigration and Passport Act, Cap 208, which permits are all revocable by section 23(1) thereof. Mr. Linton has provided no evidence to the contrary.

[65] Having marshaled her arguments above, Ms. DeFreitas-Rait maintained that no legitimate expectation can arise out of an unincorporated treaty as in the case at bar. In R v Secretary of State for the Home Department ex parte Brind [1991] 1 AC 696 the House of Lords, upholding a unanimous Court of Appeal decision firmly held that there can be no back-door importation of an unincorporated treaty into domestic law by way of a legitimate expectation. In a similar decision of the Canadian Court of Appeal in Ahani v R. 208 DLR (4th) 66, Laskin JA at paragraph 33 held that to give effect to a legitimate expectation based upon the unincorporated treaty in that case "would convert a non-binding request in a Protocol, which has never been a part of Canadian law, into a binding obligation enforceable in Canada by a Canadian court, and more, into a constitutional principle of fundamental justice. Respectfully I find than an untenable result."

[66] In support of her arguments, Ms. De Freitas-Rait asked the court to disregard Mr. Linton's vague, self-serving allegations that the Government officials and others have made public statements regarding the RTC since he has failed to specify the nature of those statements or to provide any independent evidence of the same. In the absence of any specific promise or course of conduct to the contrary, it is not reasonable for any non-citizen to believe that he had acquired a right to remain in the country merely because he had permission to do so. A

permit is not equivalent to a legal right. It is merely a permission which is subject to revocation at any time. This was clearly established in England & Anor v Attorney General of St. Lucia (1985) 35 WIR 171 p181.

[67] Reliefs

Ms. DeFreitas-Rait said Mr. Linton is not entitled to certiorari neither is he entitled to damages as alleged or at all. However, in the event that the court should find that he is entitled to any damages, they should be nominal only because he has suffered no substantial loss. In this regard, Ms. DeFreitas-Rait commended to the court the evidence of Mr. Angell that at all times Mr. Linton was treated with the utmost respect by the immigration officials. Mr. Linton's evidence on cross examination was that he "would have returned to Dominica if [he] found no employment by the end of the school year in June 2007". His permit was cancelled on 13th June 2007 just 17 days before, by his own admission, he would likely have gone back to Dominica because up to that time he had had no success in his quest for employment in Antigua. Thus, at most, cancellation of his permit cut short his intended stay by less than three weeks.

[68] In conclusion, Ms. De Freitas-Rait invited the court to dismiss Mr. Linton's claim and to find in all the circumstances:

(a) that the RTC has not been incorporated into the domestic law in Antigua and Barbuda and therefore may not be applied directly or indirectly by the court;
(b) that Mr. Linton was neither deported nor unlawfully expelled from Antigua and Barbuda;
(c) that Mr. Linton was at no time arrested or detained by immigration officers;
(d) alternatively, that any alleged arrest or detention was lawful;
(e) that there are no lawful grounds for the making of any administrative orders against the Attorney General of Antigua and Barbuda.
(f) Alternatively, the court should award him nominal damages, if any.

[69] Court's analysis

The court has reviewed the evidence adduced and has paid regard to the very lucid submissions of both learned Counsel. The following represents the findings of fact: Mr. Lennox Linton is a national of the Commonwealth of Dominica and a media worker. He has worked in several countries in the Eastern Caribbean. For several years, he worked in Antigua and Barbuda with one of the more prominent media entities, The Observer Radio Ltd. (Observer Radio). At various times during his period of employment, he had received several permissions to work. His employment with Observer Radio came to an end and he left Antigua at the end of December 2006. He returned to Antigua and Barbuda on the 10th January 2007, in order to seek employment, and was given a few weeks to remain in the country, until 10th February, 2007. His wife, who is also a national of the Commonwealth of Dominica, was at the time working in Antigua and Barbuda and had permission to do so. Their children also resided and attended school in Antigua and Barbuda. On the 5th February 2007, he presented his Caricom Skilled National Certificate to the then Chief Immigration Officer, Colonel Clyde Walker and was given six (6) months to remain in Antigua, ending 5th August, 2007 for the purpose of obtaining employment. At that time the Accreditation Board had not been established.

[70] On 13th June 2007 and while his permission to remain in Antigua was still in force, the Immigration Officials visited his home and enquired of him about his stay in Antigua. He advised the officers that he had a CARICOM Skilled National Certificate from the Government of the Commonwealth of Dominica. The officers took him from his home to the Immigration Office, where he was taken to Mr. James, the officer in charge. Mr. James advised him that "he was acting on instructions from his supervisors and that he should be sent out of the country". He sought the intervention of his Prime Minister, to no avail. The immigration Officials cancelled the permission that he was given to remain in Antigua and Barbuda. He was told the reason for him being sent home was that "they had suspected that he was working". He was permitted to return home, accompanied by the Immigration Officers, to retrieve some personal items. Upon completion, he was taken back to the airport and kept under surveillance. At the airport he was required to purchase a ticket, which he did, and was placed on a flight and sent back to his home country. The matter was publicised

and he was embarrassed. It was in those circumstances that he has filed the judicial review proceedings.

[71] General observations

Due to the fact that Mr. Linton has relied heavily on the RTC to buttress his case, the court was of the preliminary view that this case is one which could well have brought into focus the interpretation and the application of the RTC. The court, on several occasions, granted both learned Counsel indulgences in order for them to address whether, as a point of law, matters arose requiring the court's referral to the CCJ. There was a bit of hesitancy by both Counsel to address this issue. The court nevertheless formed the view that issues of international law could well have arisen. The court was mindful of the mandatory requirement of the RTC for domestic courts to refer any issue relating to the interpretation and application to the RTC to the CCJ. However, as the circumstances unfolded, it became clear that the RTC is not part of the local law of Antigua. This therefore put paid to any preliminary view that legal obligations regarding referral to the CCJ for the interpretation or application of the RTC may have been triggered. This point will be addressed in more detail shortly.

[72] Another matter that requires general comments at this juncture, is the fact that a Skilled Caricom National is required to possess qualification in order to be able to obtain permission to enter Antigua and Barbuda in order to seek employment. These are (a) the person was born in the State issuing the passport or in another qualifying Caricom State and (b) presents on entry to Antigua and Barbuda a certificate issued by the Government of a qualifying Caricom State that the holder of the passport is recognised by the Government of that qualifying State as holding qualifications which satisfy the conditions for recognition for Caribbean Community Skills. I have perused Mr. Linton's certificate and it clearly states that his occupation is a Media Manager/Consultant. The certificate also indicates that he has fulfilled the requirements of the requisite Act in that he is qualified in "Leadership & Management Experience in Print & Broadcast". In consequence, I find no basis for rejecting it as not being in conformity with the law, as urged by the Deputy Solicitor General Mrs. DeFreitas-Rait.

[73] I come now to address the issues that have been raised.

[74] Whether any issue which requires the interpretation or application of the Revised Treaty of Chaguaramas arises

The Court considers it obvious that several of the matters before it are among those which, on the face of it, touch and concern the interpretation and application of the Revised Treaty of Chaguaramas. In the normal course of events, therefore, this court would therefore have been obliged, in accordance with Article 214 of the Revised Treaty, to refer these matters to the CCJ for a determination before delivering judgment. It should be borne in mind that Article 214 is to the following effect:

> "When a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment".

[75] However, a prior question arises. This is whether the referral obligation is binding on this Court. This question arises because of what I am about to say about the place of the RTC in the laws of Antigua and Barbuda. In deciding on the referral obligation it is imperative, in my view, to determine whether the RTC is part of the domestic law of Antigua and Barbuda. The matter arises because on the submission of the learned Deputy Solicitor General that the RTC is not a part of the domestic law of the land in as much as the Caribbean Community Act No.9 of 2004, through which the RTC should have been incorporated into the domestic law, has not come into operation. In order for the RTC to have the force of law, it requires a Notice to that effect to be published. In this regard the court was not provided with any evidential basis to establish that this is so. The onus is on Mr. Linton to bring the publication of such a Notice to the court's attention. Indeed, section 1 of the Act states that it shall come into operation on such date as the Minister may, by Notice published in the Gazette, appoint. The court is cognisant of the fact that it can take judicial Notice of legislation but was unable to locate the publication of any Notice which brings the Act into operation. Neither did learned Counsel Mr. Fuller bring any Notice to the court's attention. The court is therefore

ineluctably driven to accept the proposition urged by the learned Deputy Solicitor General that the Notice has not been published.

[76] That having been said, it is the law that a treaty does not create municipal rights but rather operates at the level of international law except in so far as it is incorporated by an Act of Parliament into the national law. The Ratification of Treaty Act ibid in Antigua and Barbuda clearly puts the matter beyond doubt, if there was any. It seems clear to me that in so far as it has not been established that the Caribbean Community Act has been brought into force there is no basis for the court to hold that the RTC is part of the national law, as alluded to earlier.

[77] I find support for the above position in the clear statements of the learned Professor Dr. Winston Anderson[1] in his scholarly article entitled, "THE CARIBBEAN COURT OF JUSTICE IN ITS ORIGINAL JURISDICTION: ENSURING THE INTEGRITY OF CARICOM LAW AND THE STABILITY OF THE CARIBBEAN COMMUNITY".

[78] Indeed, Professor Anderson in his erudite article above mentioned and under the heading of "Non-incorporation and the Referral Obligation", posits that laws incorporating the Revised Treaty of Chaguaramas have been enacted in all member states of the Caribbean Community but may not have been formally brought into force in some of these states for one reason or another. This, he contends has the consequence that the Treaty does not form part of the law of the land. Even in these circumstances, he opines, the Treaty may generate domestic legal consequences. Under the doctrine of legitimate expectation as recently accepted by the CCJ in Attorney General of Barbados v Boyce and Joyce ibid, a litigant may be able to prove that the action of the state in accepting the Treaty and developing the implementing legislation or in making certain public statements, creates a legitimate expectation that the Government intended to abide by its treaty obligations.

[1] Executive Director Caribbean Law Institute Centre; Professor of Environmental and International Law, Faculty of Law, Cave Hill. University of the West Indies.

[79] The Court respectfully agrees. As a general rule, a litigant in domestic courts cannot rely upon an international treaty that has been accepted by the state but which has not been incorporated into domestic law by way of legislation. An unincorporated treaty has no effect on judicial decisions. In order for the national court to be able to exercise its referral power, it is essential that the RTC be incorporated into national law. Incorporation, as Professor Anderson points out, must include the bringing into force of the incorporating legislation as part of domestic law. The Court similarly agrees with Learned Deputy Solicitor General when she stated that unless the RTC has been incorporated into national law, it has no effect in relation to the rights of Mr. Linton to litigate matters in the local court.

[80] There is therefore no question of the interpretation or application of the RTC which can properly arise before me.

[81] In view of all of the above, the court is left to conclude, as urged by the learned Deputy Solicitor General, that the RTC is not part of the local law of Antigua and Barbuda. That having been said, it is obvious that the matter is one which on the face of it, touches and concerns the interpretation and application of the Revised Treaty of Chaguaramas. In the normal course of events, this court would therefore have been obliged, in accordance with Article 214 of the Revised Treaty of Chaguaramas, to refer the matter to the CCJ for a determination before delivering judgment. Article 214 of the RTC provides:

> "When a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment".

[82] This brings me now to examine, in passing, the issue of referral. In short I find that in the absence of any incorporating legislation the local court has no basis for a referral. In support of this view, the court finds great assistance in the pronouncements of Professor Anderson in the article alluded to above when he stated that "Article XII states that the obligation to refer arises only if the national court or tribunal considers that a decision on the question is

necessary to enable it to deliver judgment". He was of the view "this does not entail a subjective discretion in the court or tribunal"; Lord Denning handed down guidelines in Bulmer v Bollinger SA [1974] 2 All ER 1226 for when English Courts including the critical requirement that it would be impossible to deliver judgment without the community decision. But provided the objective criterion of "necessity" is met, a matter that is appealable, a referral is in view of Professor Anderson, legally obligatory.

[83] In addition, the court finds very illuminating the views of the learned Professor Anderson, in relation to the scope of the doctrine of legitimate expectation in circumstances of the non-incorporation of the RTC. The learned jurist is of the view that the difficulty in this situation is to decide upon the scope of the expectation. For example, in the circumstances just described, it may be reasonably accepted that a Caricom national could legitimately expect that the core rights guaranteed in Chapter 3 would be respected by the member state. However, continues the learned author, it would seem difficult to infer a legitimate expectation that a court should use a provision in an unincorporated treaty as the legal basis for referral. Neither, he argues, could it be said that the litigants had a reasonable expectation that the CCJ would adjudicate upon rights arising under the treaty. There is no right to such adjudication; the very drafting of the referral provision suggests that the domestic court has some measure of discretion in deciding whether to refer.

[84] Further, Professor Anderson, in his very enlightening article referred to above, said that it could well be that the local court would be called upon to adjudicate the litigant's claim for breach of his treaty rights. He indicates that this would be undesirable in as much as it would completely undermine the central object of the referral system which is to facilitate harmonization of decision making in the Caricom by locating the power to interpret and apply the Revised Treaty of Chaguaramas in a single judicial entity, i.e. the CCJ.

[85] In concluding on this question of referral, the court also finds very instructive the view of Professor Anderson in the Article referenced above, that in the circumstances of non-incorporation of the RTC, an applicant may be able to invoke the doctrine of legitimate expectation. However such invocation could only be in relation to rights claimed by the

applicant under the RTC and not as regards provisions regarding the referral obligation. In the Professor's words: "that even if a court was to accept that legitimate expectation was applicable in the circumstances of non-incorporation, this could be only in relation to rights claimed by applicant under the Treaty and not in relation to the referral provisions of the RTC". The Court respectfully accepts this approach and finds, accordingly, that in the case at bar there is no basis on which it can conclude that a question of referral to the CCJ arises.

[86] The Court cannot leave this matter without emphasizing that it has been compelled to undertake its own interpretation of a statute which is clearly intended to implement aspects of the CSME regime, without the benefit of a reference to the CCJ. This state of affairs is occasioned by the fact that the statute to implement the RTC has not been brought into force, as alluded to earlier.

[87] Whether on entering Antigua and Barbuda Mr. Linton was obliged to present the Caricom Skilled Nationals Certificate to the Immigration Authorities.

The court has given deliberate consideration to the arguments advanced by both sides. It is prudent to state at this juncture that, based on the totality of evidence, the court finds as a fact that the permission that was granted to Mr. Linton was issued on the basis of the Caricom Skilled National Certificate that he showed to the Chief Immigration Officer. There is not a scintilla of evidence before the court on which it could properly be concluded that the permission was granted pursuant to sections 22 and 14(8) of the IP Act, as urged by Ms. DeFreitas-Rait on the court. One would have thought that had the Attorney General wished the court to make such a finding, he would have at least attempted to lead credible evidence to satisfy the court of this. Regrettably, this did not occur. The court therefore has only Mr. Linton's uncontroverted evidence as to the circumstances under which he was granted the 6 months, to remain in Antigua and Barbuda. The court has no reason to disbelieve him and therefore accepts his cogent evidence.

[88] In determining what Mr. Linton's obligation was, it brings into sharp focus section 5 of the Caricom Skilled Nationals Act No.3 of 1997. It is prudent to recite section 5(1) and (2) which state:

"5. (1) Notwithstanding the provisions of any other law, an immigration officer shall, subject to section 14 and 16, permit a person to whom this subsection applies, to enter Antigua and Barbuda for a period of six months.

(2) This section applies to the holder of a passport issues by a qualifying Caribbean Community state who –

(a) was born in the state issuing the passport or in another qualifying Caribbean Community state; and

(b) present on entry to Antigua and Barbuda a certificate issued by the Government of a qualifying Caribbean Community state in that state's equivalent form to the form in Schedule II certifying that the holder of the passport is recognised by the Government of that qualifying Caribbean Community state as holding qualifications which satisfy the conditions for recognition of Caribbean Community skills qualification.

[89] Section 5(2) (b) of the Act is of great significance since the Attorney General, as stated earlier, maintains that Mr. Linton did not act in compliance with this section. The Attorney General in effect has asked the court to give a literal interpretation of the Act. This suggests that a CARICOM national who falls within the stipulated categories of persons must present the Caricom Skilled Certificate (from a qualifying Caricom State) on entering Antigua and Barbuda. As alluded to earlier, in the case at bar, this did not occur. In fact, it is clear that Mr. Linton presented his Certificate to the Immigration Authorities some four weeks after entry into Antigua and Barbuda.

[90] In order to determine this issue, the court must seek to interpret section 5(2) (b) of the Act. In so doing, the court must ensure that it ascertains what the intention of the legislature was at the time of the enactment. In so doing, the court usually has regard to the Literal rule of interpretation which requires, in the interpreting or construing an Act of Parliament, acceptance of words which are precise and unambiguous. See Sussex Peerage Case {1844] 1 CI&F 85. However, where the literal interpretation of the statutory provision leads to an absurdity or yields unjust results, the courts have, from time to time, utilised the alternative rules of interpretation. The Mischief or the Golden Rule of interpretation is

frequently utilized. This enables the court to ascertain the meaning of words in order to avoid repugnance or absurdity. See Grey v Pearson (1857) 6 HLC 61. It is the general principle of statutory interpretation that every clause or Act must be construed in the context of and with reference to the other clauses or sections of that statute. The court must seek to determine the legislative intention.

[91] Indeed, the learned Professor V.C.R.A.C Crabbe in his enlightening treatise "Understanding Statutes" at p 87 states as follows:

> "In The Duke of Buccleuch (1889) 15 PD 86 AT P 96, Lord Lindley said that:
>
> > You are not so to construe the Act of Parliament as to reduce it to rank absurdity. You are not to attribute to general language used by the Legislature in this case, any more than in any other case, a meaning which would not carry out its object, but produce consequences which to the ordinary intelligence, are absurd. You must give it such a meaning as will carry out its objects."
>
> In Gartside v IRC [1968] AC 553 at p 612, Lord Reid said that:
>
> > "It is always proper to construe an ambiguous word or phrase in light of the mischief which the provision is obviously designed to prevent, and in the light of the reasonableness of the consequences which follow from giving it a particular construction."
>
> All these authorities raise one fundamental problem: what is the test to be applied? In River Wear Commissioners v Anderson (1877) 2 AC 743 at pp 764-765 Lord Blackman stated:
>
> > "We are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, though less proper, is one which the court thinks the words will bear. That, then, is the test. The departure from the grammatical or ordinary sense of the words must of necessity relate to the Act read as a whole, and to a consideration of the objective or scheme of the Act."

[92] Guided by the above principles, it is clear to me that an examination must be taken of the whole of the legislation and its context in interpreting section 5(2). The court must ensure that the intention of the Legislature is the foremost consideration. Having done so, the court is unable to agree with the contention of the learned Deputy Solicitor General as to the meaning of section 5(2) (b). To accord section 5(2) (b) the meaning urged by Ms. DeFreitas-Rait would yield absurd results and would run counter to the clear intention of Parliament. If Ms. DeFreitas-Rait is correct, it would mean that a skilled Caricom national who is qualified under the Act and is a visitor to Antigua and Barbuda, and who subsequently receives the requisite certificate from his home country, would have to leave Antigua and Barbuda and return for the sole purpose of being able to present the certificate on entry. It is not in the interest of justice to give the section such a rigid interpretation, which would yield to absurdity and which would, with the greatest of respect, be contrary to the intention of the Legislature. It is clear to the court that a purposive approach must be given to the interpretation of section 5(2) (b). I am fortified in this view since there is nothing in the scheme of the legislation that will support the court giving the section such a narrow and restrictive interpretation. By way of emphasis, the court is of the considered view that the case at bar requires the application of the Golden Rule of Interpretation. With the greatest of respect, I reiterate that if the court was to apply the literal interpretation to the section it would yield results that are repugnant to both the intention of the Legislature and to common sense.

[93] I have no doubt that the legislature intended to facilitate the free movement of certain skilled Caricom nationals within the countries that are signatories to the RTC and not to fetter their right to do so. By way of emphasis, it is pellucid that there can be no harm in allowing a Caricom visitor, who is properly qualified, from seeking to change his status provided that all of the other prerequisites are met. Once the requisite Certificate is provided it seems to me that it is of little, if any, moment whether it was presented on entry in Antigua and Barbuda or while the visitor is in Antigua and Barbuda. This in no way negates the fact that ordinarily it should be presented on entry into Antigua and Barbuda. Nor am I deciding that if a person is residing illegally in Antigua and Barbuda he may present the Certificate to regularize his stay. This latter point may of considerable interest to several persons presently in Antigua and

Barbuda but happily, I am not called upon to decide it on this occasion and I offer no views thereon.

[94] In consequence, the court cannot accept that section 5(1) of the Act does not apply to Mr. Linton simply because he presented his CARICOM Skilled National Certificate some four weeks after entry into Antigua and Barbuda. Accordingly, the court has no doubt that when the Chief Immigration Officer (ag) granted Mr. Linton permission to remain in Antigua and Barbuda for 6 months that he acted in accordance with section 5(1) of the Caricom Skilled Nationals Act. To put the matter another way, the court accepts that when in February 2007 the then Chief Immigration Officer granted Mr. Linton permission to remain in Antigua and Barbuda for 6 months, he was thereby extending his stay as a visitor under the IP Act as contended by Ms. DeFreitas Rait.

[95] For the sake of completeness, and as indicated earlier, there is no basis on which the Caribbean Community Skilled Certificate that Mr. Linton presented can be impugned. The court sees no difference between 'media worker' and 'Leadership and Management experience in print and broadcast'. They are one and the same. Accordingly, the wording used CARICOM Skilled Certificate that Mr. Linton is not objectionable, as urged by Ms. DeFreitas-Rait.

[96] Whether Mr. Linton was entitled to remain in Antigua and Barbuda for six (6) months, based on the permission he had obtained

In seeking to resolve this issue, the court must determine whether the permission that was granted by the Chief Immigration Officer to Mr. Linton could be revoked. Section 5(1) of the Caricom Skilled National Act gives the person who is granted the permission the right to remain in Antigua and Barbuda for 6 months, in order to seek employment. This however, cannot be regarded as an absolute right.

[97] Section 10(1) (c) of the Act provides that "a person who holds a certificate therein shall not be subject to any restriction on the right to engage in gainful employment or other occupation, which would not apply, if that person were a citizen of Antigua and Barbuda."

The clear effect of that section is that a qualified person who is given permission to enter Antigua and Barbuda pursuant to the Caribbean Community Skilled Act is entitled to seek employment during the six months period that he is given. Even if the Immigration Authorities suspected, and indeed it was so, that he was working, there was nothing to prevent him from doing so. Let me hasten to add however, that there is no evidence before the court on which it could properly be concluded that Mr. Linton was indeed working in Antigua and Barbuda between February 2007 and June 2007.

[98] It is however noteworthy that section 12 of the Act stipulates that the permission to enter under section 4(1) or section 5(1) and the rights conferred under section 10 and 11 shall be irrevocable during the duration of the permission except for cause, "and by no procedure which would, apart from this Act, render at least a member of some category of citizens of Antigua and Barbuda liable to deportation, extradition or other form of expulsion".

[99] In the case at bar no evidence has been provided by the Attorney General as to the basis for the revocation of Mr. Linton's permission. No evidence has been led as to the basis of the revocation of the permission. The reasons for the revocation of Mr. Linton's permission are therefore not apparent. The only evidence before the court is that he was told that he was suspected to have been working. I digress to state that even if he was working during the 6 months period that he was granted, it would not have contravened any statutory provision. In view of the court's findings that he was given a right to remain in Antigua and Barbuda for 6 months, the court is not of the view that his right could have been properly curtailed except in accordance with law. This right is distinct from the permission that all members of the OECS are granted by virtue of the IP Act as amended. For what it is worth, it is noteworthy that the IP Act as amended provides by section 2 that section 14 is amended as follows:

"by the section after subsection (7) of the following –

(8) Subject to section 10, a citizen of a Member State of the Organisation of the Eastern Caribbean States landing in Antigua is entitled to enter and remain in Antigua and Barbuda for a period of six (6) months unless such permit to remain in Antigua and Barbuda is revoked under section 23."

[100] However, cognisance must be paid to the fact that the RTC enables Governments to take action which would otherwise be in contravention of it where those actions are necessary in the interest of national security or to protect the environment. See Articles 225 to 226 of the RTC. No evidence was provided in this regard so the court cannot surmise that it was on one of acceptable bases that his permission was revoked. In any event, as discussed earlier, the RTC forms no part of the law of Antigua and Barbuda.

[101] In view of the foregoing, I am therefore of the view that propositions advanced by learned Counsel Mr. Fuller are quite unobjectionable and agree with them. I hold that Mr. Linton was entitled to remain in Antigua and Barbuda for the entire 6 months period that he was granted by the Immigration Authorities.

[102] Whether the decision to revoke the permission is reviewable

It is well settled that judicial review is the procedure by which the court exercises supervisory jurisdiction over tribunals and public bodies. It is also the means by which the court controls the exercise of governmental powers. The court in the exercise of this jurisdiction is not concerned with the merits of the decision of the body or tribunal but seeks to ensure that the body or tribunal has acted properly or within the ambit of its power in arriving at its decision; in a word the court is concerned with the legality of the decision made.

[103] Applicants for judicial review can properly challenge decisions of public bodies on three well recognized grounds (though they are not exhaustive) namely: illegality, irrationality and procedural impropriety. See Lord Diplock's pronouncements in 1196 in Council of Civil Service Unions v Minister of Civil Service [1984] 3 W.L.R 1174.

[104] Judicial Review has also been approached from the following three bases namely:

(1) Abuse of jurisdiction

(2) Abuse of discretion

(3) Violation of the Rules of natural justice.

[105] The learned authors Grahame Aldous and John Adler in their Treatise – Applications for Judicial Review Law and Practice of the Crown Office Second edition State at page 163 that "the purpose of judicial review is not to provide an appeal procedure against decisions of public bodies on their merit but to control the jurisdiction of public bodies by ensuring that they comply with their duties or by keeping them within the limits of their powers." Judicial review proceedings is discretionary and it is for the officer to persuade the court on the basis of the evidence that the case for its consideration is one that is fit for the exercise of its discretion in favour of the officer. The remedies that are available in judicial review proceedings are also discretionary. Even though the court has the power to enjoin or compel bodies to do their duties properly, once the court comes to the conclusion that a body has the power to do a particular act the court cannot require that body to exercise its power in any particular way it can only require that the discretion lying behind the decision to exercise a power be lawfully used. See: R v Hall University Visitor; exp Page [1991] 4 ALL ER 747 at 751 per Lord Donaldson MR.

[106] In view of the fact that the court has concluded that Mr. Linton had a legal right to remain in Antigua and Barbuda for the duration of the 6 months there seems to be little by way of argument for saying that the decision to revoke the permission is not reviewable. The court is fortified in the view since the Caribbean Community Skilled Nationals Act specifically provides the bases upon which the state can revoke the permission. It therefore must be open to the court to be able to review the circumstances in which the revocation occurred in order to be able to determine whether it is in accordance with law. The court therefore does not accept that it is precluded from reviewing the Immigration Authorities' decision to revoke the permission, as contended for by the learned Deputy Solicitor General.

[107] Even if the court was wrong in holding that Mr. Linton has a legal right to remain in Antigua and Barbuda and rather the correct position is that advocated on behalf of the Attorney General, namely that it was a mere permission to remain in Antigua and Barbuda, this without more is not sufficient to oust the court's jurisdiction to review the revocation. A permission which was merely discretionary in nature as part of the Executive's prerogative, the revocation of the Executive's prerogative is reviewable on three grounds, namely:

irrationality, illegality and procedural irregularity. See HMB Holdings v Cabinet of Antigua and Barbuda [2007] UKPC 37, (2002) 70 WIR160. See also C O Williams Construction Ltd v Blackman et al (1994) 45 WIR 94 in which the Privy Council held that a decision of the Cabinet Barbados is susceptible to judicial review. Their Lordships stated that in relation to the exercise of functions specifically conferred on the Cabinet by statute which, had they been conferred on a Minister instead of Cabinet would have been subject to judicial review, the Cabinet is in principle susceptible to judicial review. The law is clear; the court is clothed with the power to ensure that discretions are lawfully exercised and for proper purposes.

[108] I am fortified in my view and find the pronouncements of Lord Scarman in Council of Civil Service Unions v Minister for the Civil Service [1984] 3 All ER 935 at 946f-948d are very instructive on this point:

> "The point of principle in the appeal is as to the duty of the court when in proceedings properly brought before it a question arises as to what is required in the interest of national security. The question may arise in ordinary litigation between private persons as to their private rights and obligations; and it can arise, as in this case, in proceedings for judicial review of a decision by a public authority. The question can take one of several forms. It may be a question of fact which Parliament has left to the court to determine: see for an example s 10 of the Contempt of Court Act 1981. It may arise for the consideration as a factor in the exercise of an executive discretionary power. But, however it arises, it is a matter to be considered by the court in the circumstances and context of the case. Though there are limits dictated by law and common sense which the court must observe in dealing with the question, the court does not abdicate its judicial function. If the question arises as a matter of fact, the court requires evidence to be given. If it arises as a factor to be considered in reviewing the exercise of a discretionary power, evidence is also needed so that the court may determine whether it should intervene to correct excess or abuse of the power.
>
> My Lords, I conclude, therefore, that where a question as to the interest of national security arises in judicial proceedings the court has to act on evidence. In some cases a judge or jury is required by law to be satisfied that the interest is proved to exist; in

others, the interest is a factor to be considered in the review of the exercise of an executive discretionary power. Once the factual basis is established by evidence so that the court is satisfied that the interest of national security is a relevant factor to be considered in the determination of the case, the court will accept the opinion of the State or its responsible officer as to what is required to meet it, unless it is possible to show that the opinion was one which no reasonable minister advising the State could in the circumstances reasonably have held. There is no abdication of the judicial function, but there is a commonsense limitation recognised by the judges as to what is justiciable; and the limitation is entirely consistent with the general development of the modern case law of judicial review."

[109] Let me say that it is no part of the court's function to determine whether the decision to revoke the permission was correct, the sole issue for the court to determine is whether the decision was illegal or irrational. I emphasise that the court will not abdicate its responsibility to review executive decisions not on the basis of whether they are right or wrong, but whether for example, they are irrational or illegal. In this regard, the principles stated in Council of Civil Service Unions v Minister for the Civil Service ibid are very helpful. In dealing with the issue of national security in which it was contended that there was a failure of the Secretary of State to consult with employers before taking a decision which prevented them from continuing to belong to trade unions. The issue arose as to whether the decision was reviewable based on two grounds, namely, it was that dealt with as the State's prerogative and secondly, it concerned matters of national security. Lord Fraser stated that:

"The question is one of evidence. The decision whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decision on national security."

Authority for both these points is found in The Zamora [1916] 2 AC 77. I would borrow from the words of Lord Scarman in the Council of Civil Service Unions v Minister for the Civil Service ibid case in which he said:

"Where a question as to the interest of national security arises in judicial proceedings, the court has to act on evidence. In some cases a judge is required by law to be satisfied

that the interest is proved to exist, in others the interest is a factor to be considered in the review of the exercise of an executive discretionary power. Once the factual basis is established by evidence so that the court is satisfied that the interest of national security is a relevant factor to be considered in the determination of the case, the court will accept the opinion of the Crown or its responsible officers as to what is required to meet it, unless it was possible to show that the opinion was one which no reasonable minister advising the Crown could in the circumstances reasonably have held."

[110] I can do no more than adopt those helpful principles. Accordingly, I am satisfied that the court is authorised to determine whether the discretion, if that is what it was, was properly exercised. See Oliveira v Attorney General Claim No. 0449 of 2008 in which this court held that a Cabinet decision to deem a person a prohibited immigrant or visitor is reviewable on the ground of irrationality. It seems to me that whether or not the permission was granted pursuant to the provisions of the IP Act or the Caricom Skilled National Act, is immaterial. The issue remains whether its revocation can properly be reviewed by the court. The short answer is in the affirmative.

[111] The court has no doubt that the decision of the Immigration Authorities to remove Mr. Linton is amenable to judicial review on the ground of illegality and irrationality. It may well be that the decision to revoke his permission to remain in Antigua and Barbuda was irrational for want of consideration of the relevant matters. The adverse effect that a person's removal would have on third parties is a relevant matter. The classic statement of Lord Bridge of Harwich speaking for their Lordships in R v Immigration Appeal Tribunal, ex p Singh (Bakhtaur) 1 WLR 910 at 919B-D is on point:

"On classic Wednesbury principles (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223) in exercising his discretion whether to implement a court recommendation for deportation or whether to decide to make a deportation order against an overstayer, the Secretary of State is bound to take account of all relevant considerations. If, therefore, some interest of third parties which is known to the Secretary of State and which would be adversely affected by deportation is in truth relevant to the proper exercise of the discretion, a decision made without taking into

account would in any event be open to challenge by judicial review and consequently would be open, in the case of an overstayer, to an appeal under section 19(1) as being "not in accordance with the law" quite apart from the immigration rules."

[112] The Caricom Skilled National Act provides the basis on which the government can lawfully revoke the permission that is given to a Caricom Skilled National. These include on the basis of national security and for environmental bases. In view of the fact that the Crown provided no basis for the revocation of the permission, I am forced to accept that there was no basis or at the very least, it was the basis that Mr. Linton has indicated to the court namely they suspected that he was working.

[113] Whether the decision was properly revoked

In the circumstances, the court is of the view that the permission to revoke the permission was irrational. For the sake of completeness, even if the court was wrong to conclude that Mr. Linton was granted permission to remain in Antigua and Barbuda for 6 months pursuant to the IP Act, this still brings into question whether the revocation was lawful. In this regard, section 23 of the Act provides that a permit may at any time be revoked by the Minister (with responsibility for Immigration matters) or by the Chief Immigration Officer acting on the direction of the Minister. Even assuming that the permission was revoked pursuant to the IP Act the court is not precluded from reviewing the decision on the principles of illegality or irrationality. It is no part of the court's function to determine what the decision ought to have been. Having applied the relevant principles to the case at bar, the court is not satisfied that the decision to revoke Mr. Linton's permission was rational.

[114] In so concluding, the court has attached significant weight to Mr. Linton's unchallenged evidence that he was told that the decision to revoke his permit to be in Antigua and Barbuda for 6 months was based on the authorities' "suspicion that he was working". I digress to state that despite the defendant, being aware that the basis for the revocation of the permission is one of the issues that have been joined between the parties he, has failed to provide the court with any basis for the revocation of the permission. Absence such the court is forced to conclude that there was no lawful basis for the revocation. The further conclusion is that the

revocation of Mr. Linton's permission to remain in Antigua and Barbuda for 6 months was unlawful. Accordingly, the arguments advanced by Mr. Fuller are unobjectionable.

[115] Whether Mr. Linton was unlawfully removed from Antigua

The court, having concluded that the revocation of the permission was unlawful, now goes on to consider whether Mr. Linton was unlawfully removed from Antigua and Barbuda. It seems to the court that in the face of the very credible and overwhelming evidence of Mr. Linton this issue was open to very little debate, if any. It is difficult to understand in the face of the formidable evidence to the contrary, the learned Deputy Solicitor General Ms. DeFreitas-Rait could have argued that Mr. Linton left Antigua and Barbuda on his own volition or free will. In addition, the evidence adduced from the witness Mr. Agnell who was called by the defendant is consistent with the Immigration Authority's request of Mr. Linton that he left Antigua and Barbuda, after purchasing the ticket to the Commonwealth of Dominica. The court has not the slightest doubt based on the very reliable evidence presented that Mr. Linton was made to leave Antigua and Barbuda against his clear wishes.

[116] In addition, having listened and observed the Immigration Officer Mr. Agnell, the court harbours no doubt that Mr. Linton was not a free person when he was taken from his home by the Immigration Authorities. Had he not purchased his own ticket back to the Commonwealth of Dominica, he would have been deported. It is noteworthy that Mr. Agnell struck me as an Immigration Officer who is not to be trifled with; it would have been surprising if Mr. Linton were to put up any resistance to so many Immigration Officers. I am satisfied that he left Antigua and Barbuda in order to avert any further embarrassment. Irrespective of the word that is used to describe his leaving, it is clear that he was forced to leave Antigua and Barbuda by the Immigration Authorities after they had simultaneously cancelled the permission he was granted.

[117] In view of the foregoing, it is evident that Mr. Linton was unlawfully removed from Antigua and Barbuda. For the sake of completeness the court finds as a fact that Mr. Linton was arrested by the Immigration Authorities and taken into custody. The court accepts his

evidence in preference of that of Supervisor Agnell who sought to have the court believe that Mr. Linton was never arrested. There is not the slightest doubt that when Mr. Linton was taken from his home by the Immigration Officers, until the time he left on the plane, homeward bound, that he was under the arrest of the Immigration Officers. Surely he did not request to be kept under surveillance or to leave his wife and children behind unceremoniously.

[118] Before leaving this issue, it is pertinent for the court to state that any removal of an alien from the state of Antigua and Barbuda can only be carried out based on the order of the Magistrate. Indeed, section 14(6) of the IP Act grants a Magistrate the power to issue a warrant for the apprehension and removal of any person who remains in Antigua and Barbuda in contravention of the IP Act. See Oliveira v Attorney General ibid. Therefore, when Mr. Linton was removed by the Immigration Authorities without being taken before the Magistrate, it was unlawful.

[119] Whether Mr. Linton had a legitimate expectation that he would be allowed to remain in Antigua and Barbuda for six (6) months

Legitimate expectation cannot arise if there are no legal rights in existence. It is the law that legitimate expectation and legal rights simply do not co-exist.

[120] It bears repeating that in his pleaded case, Mr. Linton alleged that there was violation of his legitimate expectation created by virtue of the Laws enacted by the Parliament of Antigua and Barbuda and the RTC which was enacted into law in Antigua and Barbuda (even though he has provided no proof of this). Ms. DeFreitas-Rait strenuously argued that no legitimate expectation was created in the circumstances. Despite several invitations from the court to both Counsel to examine the CCJ case of Attorney General and Others v Joseph and Boyce ibid, the learned Deputy Solicitor General took the court's invitation and provided very helpful and careful analysis of the case in support of her position, however learned Counsel Mr. Fuller did not avail himself of the court's invitation. He has quite properly apologised to the court for failing to comply with the court's several requests that he address the issue vis-à-vis The Attorney General and Others v Joseph and Boyce ibid.

[121] Before dealing with this issue, it is necessary to reiterate that Mr. Linton has fashioned his claim on the RTC and has argued that he had acquired a legitimate expectation that he would be entitled to remain in Antigua and Barbuda based on the permission he was granted to so do. In his witness statement, he also alluded to the existence of a legitimate expectation based on "statements made by public officials". The court is of the respectful view that the evidential basis to ground a claim based on the legitimate expectation was not provided. Indeed, Mr. Linton has failed to lead any evidence as to who made the statements, what were the nature of the statements, neither did he advert the court's attention to any circumstances that could give rise to the legitimate expectation that he contends exists based on alleged statements made by Government Officials. Therefore, the court agrees with Ms. DeFreitas-Rait's submissions that there is an insufficiency of evidence before the court on which it could be concluded that Mr. Linton had a legitimate expectation to remain in Antigua and Barbuda. However, learned Counsel Mr. Fuller felt content to state that Mr. Linton had a legitimate expectation under the RTC which are enforceable by the court. He says that Mr. Linton had a legitimate expectation of being entitled to remain in the country and that it was breached. However, he did not present the court with the evidential basis for his contention.

[122] Accordingly, the court accepts the position, as urged by Ms. DeFreitas-Rait, that Mr. Linton has not adduced any evidence on which the court can properly conclude that there was created in Mr. Linton a legitimate expectation, based on the RTC to be afforded the facilities so provided. The court indeed finds the enlightening pronouncement of Nelson J in Attorney General v Joseph and Boyce ibid quite instructive. The mere signing of the RTC by the Government of Antigua and Barbuda, without more cannot create a legitimate expectation, as contended by Mr. Linton. Neither is the court persuaded that Mr. Linton has proved that he had a legitimate expectation to remain in Antigua and Barbuda. See also the judgments of learned Judges, De La Bastide, Nelson J, Saunders J, Bernard J, and Pollard J.

[123] The court does not propose to repeat all of the very edifying principles that were enunciated by the learned Judges of the Caribbean Court of Justice in Attorney General v Joseph and

Boyce ibid and analysed by the Deputy Solicitor General, and can do more than usefully adopt them without repeating them in their entirety. One of the main principle that is distilled from the very illuminating case of Attorney General v Joseph and Boyce ibid is that where a Government enters into a treaty and has made positive statements by representatives of the executive arm evincing an intention to abide by the treaty, and has in the past abided by the terms of the treaty and was engaged in treaty compliant executive conduct, this would create a legitimate expectation in the persons concerned.

[124] In the case at bar, it may well be that the facts that would tend to support a legitimate expectation of Mr. Linton that rights granted would be honoured by the Government of Antigua are: the acceptance of the RTC establishing the Caribbean Community including the CSME in which is freedom of Skilled Caricom to move and seek employment in all Member States of the Community is prominently recognised; the Caribbean Community Act was enacted by the lower house; it has been passed by the senate; and it has been published in the Gazette.

[125] On the other hand, in the case at bar, there are equally opposing facts: The Caribbean Community Act has not been proclaimed or otherwise brought into force into the laws of Antigua and Barbuda; that the Caribbean Community Act clearly states that it was to come into force by Notice published in the Gazette; that the applicant has provided no evidential basis for his statement that he acted on the undertaking of government officials or ministers; that no notice has been published; that no practice has developed in relation to the alleged statement.

[126] In the case at bar, quite apart from the fact that I have found that Mr. Linton had a legal right to remain in Antigua and Barbuda, I have no doubt that any possibility of a legitimate expectation arising is contradicted by the express provisions of the Caribbean Community Act which stipulates that it shall not come into force until the requisite Notice is published. This is in clear contrast to the situation in Attorney General v Joseph and Boyce ibid where legitimate expectation was found to exist. In any event, in the case at bar, the court is unable to accept the arguments advanced by Mr. Fuller that Mr. Linton had a legitimate

expectation that he would be permitted to remain in Antigua and Barbuda for 6 months in order to seek employment in view of the fact that the court has held that he had a legal right to so remain.

[127] Remedies, if any, to which Mr. Linton is entitled

I come now to one of the most challenging parts of this case: what reliefs should the court grant to Mr. Linton? I have to be mindful that any order that I make should do justice to Mr. Linton's case while at the same time being cognisant of the need to ensure that public administration and the executive's discretion is not improperly impacted. I also have to ensure that the reliefs that I grant would serve some useful purpose.

[128] As stated earlier, Mr. Linton has seeks certiorari to quash the decision to revoke the permission that he was granted. He also seeks a number of declarations and orders, some of which are not tenable due to the totality of circumstances. Indeed, the court is of the view that the situation has been overtaken by certain events including that he had left Antigua and Barbuda as a result of the revocation. He nevertheless is entitled to the reliefs which would have the effect vindicating his rights and compensating him for his loss. These include the award of damages and the grant of a number of declarations. (The court was told that since these events Mr. Linton has been able to visit Antigua and Barbuda unhindered).

[129] It is the law that the court has a discretion whether or not to grant an order of certiorari to quash an unlawful decision. In several cases, the court has refused to grant the order but instead has made declarations. Indeed, in R v Secretary of State for Social Services ex parte Association of Metropolitan Authorities the court refused to quash regulations for general administrative reasons. However, the court granted a declaration that the Secretary of State had acted unlawfully. In view of the totality of circumstances, I am of the respectful view that this is not an appropriate case in which to grant a certiorari. However, the court has no doubt that it should make appropriate declarations to indicate that Mr. Linton's rights were unlawfully violated and to indicate that the revocation of his permission to remain in Antigua and Barbuda was unlawful.

[130] Learned Counsel Mr. Fuller said that Mr. Linton should be compensated for his unlawful removal from Antigua, the public humiliation and embarrassment that he experienced. He however, has not sought to quantify the loss. I have no doubt that the court is clothed with the jurisdiction to grant damages in matters of judicial review. Part 56(1) (c) (d) and (4) of the CPR 2000 state:

"56.1(1) This Part deals with applications –

(c) for judicial review; and

(d) where the court has power by virtue of any enactment or at common law to quash any order of a Minister or Government Department or any action on part of a Minister or Government Department.

(4) In addition to or instead of an administrative order the court may without requiring the issue of any further proceeding, grant

(c) restitution or damages"

[131] In view of the foregoing, the court is satisfied that it ought to grant Mr. Linton damages for breach of his opportunity to seek employment in Antigua and Barbuda for a period of approximately two months. He is also entitled to be compensated for his wrongful arrest/expulsion from Antigua and Barbuda.

[132] I am fortified in my view above mentioned, by virtue of Part 56.8 of CPR 2000 which state:

"56.8(1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –

(a) arises out of; or

(b) is related or connected to;

the subject matter of an application for an administrative order.

(2) In particular the court may, on a claim for judicial review or for relief under the Constitution award –

(a) damages;

(b) restitution; or

(c) an order for return of property to the claimant; if the –

(i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or

(ii) facts set out in the claimant's affidavit or statement of case justify the granting of such a remedy or relief; and

(iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy."

[133] In the premises, I have no doubt that Mr. Linton has satisfied the court, on the pleadings, that at the time when the administrative claim was filed, he could have issued a claim against the defendant for a recognised cause of action. In awarding Mr. Linton damages, it is evident that Mr. Linton must also be compensated for the embarrassment and humiliation that was occasioned to him as a consequence of his unlawful removal from Antigua and Barbuda.

[134] Since the court has found that Mr. Linton was unlawfully removed from Antigua and Barbuda approximately two months before his permission had expired, in so doing he was deprived of his right to seek employment within that period. He must be adequately compensated for the loss of the opportunity to seek employment in Antigua and Barbuda for two months. This must be weighed against the fact that he was in Antigua and Barbuda for nearly four months and was unable to obtain employment during that time. The court has to determine what is a reasonable and just sum to award him as damages, in view of the fact that the court has received no assistance in relation to this aspect of the case. The court is of the view that the sum of $5,000.00 is an adequate award in all of the circumstances.

[135] This brings the court now to address the level of compensation to which he is entitled for having been unlawfully removed from Antigua and Barbuda. In determining the measure of damages to be awarded, the court must take into account factors such as his status a well known media personality; he was forced to leave his wife and children behind, he was unceremoniously taken from his home, the public embarrassment that he suffered in circumstances where he had a right to remain in Antigua and Barbuda for two months. In view of the totality of circumstances, the court is of the view that the sum of $15,000.00 is fair

compensation. Here again, the court was not provided with any assistance from either of the two learned Counsel on the measure of damages.

[136] Conclusion

For the reasons advanced above, judgment is given in favour of Mr. Lennox Linton and I make the following declarations and orders:

(a) That Mr. Lennox Linton is awarded damages against the Attorney General of Antigua and Barbuda in the sum of $20,000.00

(b) That Mr. Lennox Linton was entitled to remain in Antigua and Barbuda for the six (6) months.

(c) That the revocation of permission granted to Mr. Linton to remain in Antigua and Barbuda was unlawful.

(d) That the removal of Mr. Lennox Linton from Antigua and Barbuda was unlawful.

(e) Prescribed costs are awarded, unless otherwise agreed.

[137] The court gratefully acknowledges the tremendous assistance of both learned Counsel and specifically places on record it's appreciation to the Deputy Solicitor General for her lucid and sterling contribution.

Louise Esther Blenman
High Court Judge
Antigua and Barbuda