

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

Claim No: SLUHCV 2010/0450

BETWEEN:

ANTONIA MARTIAL

Claimant

AND

THE PUBLIC SERVICE BOARD OF APPEAL

Defendant

Appearances:

Mr. Horace Fraser for the Claimant  
Mr. George Charlemange for the Defendant.

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2011: January 11<sup>th</sup>;  
June 22<sup>nd</sup>.  
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JUDGMENT

[1] **WILKINSON J.:** Ms. Martial, a qualified accountant by her amended claim form filed on 17<sup>th</sup> November 2010, seeks the following relief:

1. An order certiorari to quash the decision of Public Service Board of Appeal (hereinafter the PSBA) on the ground of abuse of power.

2. An order certiorari to quash the decision of PSBA to uphold the decision of the Public Service Commission (hereinafter the PSC) on the grounds of unreasonableness and irrationality and error on the face of the record.
3. A declaration that the Ms. Martial is entitled to be restored to the Public Service.
4. An order mandamus directed to the PSBA to invoke the mechanism to ensure that Ms. Martial is restored to her office.
5. A declaration that Ms. Martial is entitled to be paid salaries from March 2008, to present 3 years and 10 months as at the date of trial.
6. Costs.
7. Such further and other relief as the Court deems just.

[2] It is not disputed that Ms. Martial became a member of the Public Service in 1982 as a clerk. She subsequently qualified as an accountant and in December 2001, was appointed the accountant in the Police department accounts division. The Police accounts division was responsible for depositing with the bank the money paid into the Criminal Records Office (hereinafter the CRO) and the Immigration Department (hereinafter the ID). There was a surprise survey carried out on 28<sup>th</sup> October 2003, by the Director of Audit and two (2) sums of money being three thousand three hundred and thirty two dollars (\$3,332.00) and three thousand nine hundred and seven dollars (\$3,907.00) were found to have been received from the ID on the 18<sup>th</sup> September 2003 and 30<sup>th</sup> September 2003, respectively, but not deposited in the bank and the location of the money was unknown to Ms. Martial. On the days of receipt a second officer, Mrs. Mathurin was responsible for receiving, verifying and organizing the deposit of the money to the Bank and on the date of the survey she was absent from office. Ms. Martial was sent on leave by the Permanent Secretary in the Ministry of Labour, Relations, Public Service and Co-operatives on 21<sup>st</sup> November 2003 for the period 24<sup>th</sup> November 2003, to 18<sup>th</sup> December 2003. On 19<sup>th</sup> December 2003, when she resumed duty, she was formally interdicted pending investigation of twenty-one (21) alleged acts of misconduct connected with her duties. She remained interdicted from duty from 19<sup>th</sup> December 2003, until 30<sup>th</sup> July 2007, when the PSC began investigation of the allegations of misconduct.

[3] On 5<sup>th</sup> March 2008, the PSC found her liable for five (5) acts of misconduct and ordered her immediate dismissal from the Public Service. She appealed that decision before the PSBA. It was heard on 3<sup>rd</sup> February 2009, and the decision was rendered 6<sup>th</sup> May 2010. The PSBA stated that it found her guilty of four (4) acts of misconduct. She appeals the PSBA's decision.

[4] When the matter came on for trial, Counsel for the Parties informed the Court they there were prepared to proceed on the evidence set out in the affidavits and there would be no cross-examination. There was disclosed by Ms. Martial the decision of PSBA, the decision of the PSC, and a partial of the transcript of the proceedings before the PSC (pages 1-42, 241 -321) and therein was set out the evidence of Ms. Martial, Mrs. Hyacinth, the Director of Audit, and Ms. Marie-Ange Louis, Deputy Permanent Secretary in the Ministry of Justice at the time. From the partial of the transcript disclosed, the Court was unable to determine whether cross-examination of the Ms. Marie-Ange Louis had been concluded since page 42 ends with Mr. Fraser stating "But we're talking about a period not necessarily a date." Also unfortunate is that while the PSC appears to have had before it a copy of the Director of Audit's report, and a copy of a subsequent report prepared by Ms. Marie-Ange Louis, and which report appears to have been instrumental in the commencement of proceedings before the PSC, those reports were not disclosed.

[5] The decision of the PSBA was as follows:

"The Board having reviewed all the comments raised in the transcript is not satisfied that there was any bias on the part of the Commission, which would have impacted negatively on the Appellant getting a fair hearing.

Having reviewed all the evidence and having heard both Counsel, the Board is of the view that there is no reason to interfere with the findings of the Public Service Commission in relation to the four complaints arising out of the audit conducted by the Audit Department on October 28<sup>th</sup>, 2003, and the appeal is dismissed in relation to those complaints.

In relation to ground (2) (b) (v) the Appeal the Board accepts the submission of the Appellant's Counsel, the matter having been investigated by the Office of the Director of Public Prosecutions and resolved long before the institution of proceedings against the Appellant. The Appeal on this matter is therefore upheld."

[6] In relation to the issue of punishment the PSBA said:

“Counsel for the Respondent submits that the Appellant’s actions are in breach of the conditions of her service and of Section 45(1) of the Financial Regulations and warrant her dismissal, as they constituted conduct inconsistent with the faithful discharge of her obligation under her contract of employment. The Board takes Mr. Fraser’s point that the Regulations do not create an offence, but rather set a standard. But what is the consequence of that standard? In a recent case before the Board **Enrico Lewis v. Public Service Commission Appeal No.7 of 2007** the Appellant was charged in a manner similar to complaints (i) and (ii) on which the Appellant was found guilty by the Respondent and he was dismissed from the Public Service. In that matter the Appellant personally received the monies at the end of the day and was the one responsible for the bank deposits as well. In this instant case the Appellant as far as the evidence shows did not personally receive the monies, but as the Accountant, she had overall responsibility for the monies collected and for ensuring its safe transfer or deposit to the account of the Accountant General .... The Board is of the view that the breach of Section 45(1) of the Financial Regulations when taken together with the principal complaint of not being able to account for money collected on behalf of the Government satisfies the test of due and faithful discharge of duties found in **Pearce v. Foster (1886) QBP 536 at 542** and **Laws v. London Aumich (1959) 1 WLR 698** which justifies immediate dismissal. The Board is bound by its decision in **Enrico Lewis v. Public Service Commission** and the Appeal in relation to the first four counts is not allowed. It therefore, follows that the decision of the Public Service Commission in relation to the Appellant stands.”

[7] The pertinent grounds of appeal before the PSBA were set out in a notice of appeal dated 13<sup>th</sup> March 2008, and as abstracted from the decision of the PSBA were as follows:

“(a) In relation to the allegations proven against the Appellant as set out at 2(i) to (iv) of the written decision:

- (i) The decision goes against the weight of the evidence.
- (ii) The Commission misdirected itself by treating the allegations as being in the nature of strict liability offences thus totally and unreasonably rejected the Appellant’s explanations.
- (iii) The decision of the Commission is totally unreasonable and irrational and perverse. Further the Commission took an irrelevant consideration into account in arriving at this decision.

- (iv) The Commission in arriving at the said decision was actuated by bias and did give the appearance at the hearing of the matter that it was biased.
- (v) The punishment of immediate dismissal of the Appellant as ordered by the Commission was excessive and unreasonable in all circumstances."

[8] The PSC's decision was set out in a letter dated 5<sup>th</sup> March 2008, it stated:

"Guilty of conduct inconsistent with the fulfillment of the condition of her contract of service on two counts viz:

(a) That on September 18<sup>th</sup>, 2003 monies in the amount of \$3,332.00 were collected by the Immigration Department on behalf of the Government of St. Lucia and you failed to reasonably account for the said monies which were missing when the Office of the Director of Audit conducted an audit of the Police Department on October 28<sup>th</sup>, 2003.

(b) That on September 30<sup>th</sup>, 2003 monies in the amount of \$3,907.00 were collected by the Immigration Department on behalf of the Government of St. Lucia and you failed to reasonably account for the said monies which were missing when the Office of the Director of Audit conducted an audit of the Police Department on October 28<sup>th</sup>, 2003.

(2) Guilty of conduct in breach of Regulations 45(1) of the Financial Regulations 1997 on two counts viz:

(a) That on November 3<sup>rd</sup>, 2003 you deposited at the First Caribbean International Bank, monies in the amount of \$3,907.00 which said monies were collected on behalf of the Government of St. Lucia on September 30<sup>th</sup>, 2003.

(b) That on November 12<sup>th</sup>, 2003 you deposited or caused to be deposited monies in the amount of \$3,332.00 which said monies were collected on behalf of the Government of St. Lucia on September 18<sup>th</sup>, 2003'.

AND

(3) Guilty of conduct tending to bring the Government into disrepute in breach of Order 4.1 of the Staff Orders on one count viz:

That she presented to the Customs & Excise Department cheques dated January 5<sup>th</sup>, 1996 and December 16<sup>th</sup>, 1999 in the amounts of \$8,786.25 and \$1,202.54 respectively for payment of

customs duties where said cheques were not honoured by the bank.

- [9] The PSC stated that it found that Ms. Martial had overall responsibility for the management of the accounts division and had reneged on her responsibility when she failed to ensure that all money which was collected on behalf of the Government of Saint Lucia was properly accounted for and that she could not absolve herself of the responsibility assigned to her, by saying that another person was responsible for depositing the money or putting the money in the safe and that she did not know whether the money had been deposited or whether it was in the safe. The PSC also stated that she had failed in her legal obligation as head of the accounts division to ensure that all money collected on behalf of the Government was deposited in accordance with regulation 45 (1). Further, she deliberately chose to put her own interpretation on the accounting term "cash in hand" and this was an attempt to circumvent her responsibilities.

#### **Issues**

- [10]
1. Whether Ms. Martial was a collector of revenue and therefore subject to regulation 45(1).
  2. Whether the PSBA acted reasonably and rationally given all the circumstances existing in the accounting division at the time of the survey.

#### **Ms. Martial 's evidence**

- [11] Ms. Martial's evidence was provided by a brief affidavit and the extract of transcript which was exhibited with her affidavit. In her affidavit aside from reciting the uncontested facts set out about her qualifications, her interdiction, the PSC's decision and PSBA's decision, she complained about the length of delay of proceedings before the PSC and PSBA. She said that the entire process was detrimental to good administration. She was informed that the delivery of PSBA's decision one (1) year three (3) months after the hearing was an abuse of power, and this rendered the decision unsafe, unreliable and brought the whole system into disrepute. She also said that she further had the impression that the PSBA merely rubber- stamped the decision of the PSC because it was under pressure to

produce its decision. She did not feel that the evidence was weighed by the PSBA as it failed to state why it accepted the PSC's decision as being correct, and it failed to state why her evidence was not accepted. She also expressed the view that her Counsel's submissions were either by-passed or forgotten or not dealt with as no reference was made to them and this could be because of the delay in rendering the decision.

- [12] In relation to the first two (2) counts of misconduct, her evidence was that it was the responsibility of the Mrs. Mathurin to receive the money in issue, secure it in the safe, and subsequently organize for the deposit of it in the bank. On the day of the survey, Mrs. Mathurin was not at work, there was no record by Mrs. Mathurin in the cash book that money had been received and was in the safe, the safe was not functioning, and could not be opened. When the safe was subsequently opened, the money was found therein and deposited. Further, she had stated that the staff in her department had been reduced from eight (8) persons to three (3) persons and this caused the department to be dysfunctional and the existing staff was inundated with work.
- [13] She believed that her evidence offered a plausible explanation for the money and it proved that the money was not missing as alleged. The count against her had not been proved. She also believed that there was no evidence before the PSBA which contradicted her evidence and so unless the PSC totally rejected her evidence with good reasons, their finding against her was an error on the face of the record. This error was adopted by the PSBA when it too failed to weigh the evidence and merely accepted the PSC's error. Further, once the money was produced, the allegation that it could not be accounted for because it was missing, failed.
- [14] Ms. Martial believed that the PSBA also got it wrong when it said that her appointment as Accountant 11 and assignment to Police Department under the Ministry of Justice effectively made her the Supervisor (person responsible) for

the Department. Section 6 of the Finance (Administration) Act<sup>1</sup> defined “accounting officer” and by that definition, the accounting officer was the Head of the Department, this was the Commissioner of Police. She was therefore not responsible for the department. The allegation therefore ought to have been made against the Commissioner of Police.

- [15] The PSC she said, also saw her definition of “cash in hand” as an attempt by her to circumvent her responsibilities. Her definition of “cash in hand” was not the cause of the late deposits and therefore was an irrelevant consideration upon which the PSC relied and which was wholly adopted by PSBA.
- [16] She rejected the PSBA’s reliance on the **Enrico Lewis** case because whereas in that case the officer had received the money personally, and was responsible for depositing the money which he did not deposit and could not account for when called upon to do so, in her instance the money was received by Mrs. Mathurin, and was later accounted for.
- [17] It was her opinion that since the money was subsequently accounted for, and the accounts department was dysfunctional because of staff shortage, the penalty of immediate dismissal was harsh and unjust and especially so since there was no penalty provided in regulation 45(1).
- [18] According to the transcript, before the PSC she said that she was responsible for the accounts division. The division was comprised of eight (8) persons and they were 1 Senior Assistant Accountant 1, Mrs. Mathurin, 2 Accounts Clerk III, 1 Accounts Clerk II, 1 Accounts Clerk I, an Acting Secretary, the Office Assistant who was assigned for her supervision, and herself. It was only Mrs. Mathurin who reported directly to her on a day to day basis and Mrs. Mathurin was the floor supervisor of the staff.
- [19] When the money came in on afternoons, it came in a cash book and Mrs. Mathurin would verify the amounts against the duplicate receipts, sign the ID or CRO cash registers (books). Mrs. Mathurin then lock away the money together

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<sup>1</sup> Cap.15.01

with a slip in the safe. The money was then recorded in the division's cash book. The following morning or whenever Mrs. Mathurin had time, she would make up the deposit and send the Office Assistant to the bank with the deposit. She never dealt with receiving the money once Mrs. Mathurin was present. On the rare occasions during Mrs. Mathurin's absence when she received the money, she would make sure that it was correct and then lock it away in the safe. If it was an occasion where Mrs. Mathurin was only temporarily out of office. Mrs. Mathurin would deal with the money which she had received the following day.

[20] In relation to the issue of regularity of deposits to the bank, she said that as far as procedure went the money was to be deposited within the week, and this meant within 5 working days. The regulation said within a reasonable time and reasonable time depended on the department, and a department would decide within itself what was reasonable. When she arrived at the department it already had its procedure in place on how things were to be done and in some instances the money was as late as 19 days to the bank. She also met there a procedure whereby Mrs. Mathurin who had been in the accounts division for between 15 to 20 years would hold back deposits when she saw for example that a receipt showed United States dollars had been received but she received Eastern Caribbean dollars and contact the ID or CRO and demand the United States dollars for the deposit. She changed that procedure and asked for the deposit to be done with the money received and the follow-up to be done subsequently. She attempted to reign in late deposits to the bank by actually getting involved, and putting together the deposits and sending them to the bank from time to time. On the question of what would she consider to be a reasonable time, she said that when she worked at the Boy's Training Centre, the money was deposited once per month. She considered once per week reasonable. She felt she was supported in this position by a written statement from Ms. Marie Monroe of the Accountant General's office, which said the money was to be deposited weekly. She knew about the written statement as it was written when she worked in the Accountant General's Office.

- [21] Her internal control of the money received from the ID and the CRO was by way of a check of the records in the cash books against the deposit slips for the previous month during the first week of the current month. She had in the past before the current issues of September 2003, and October 2003, caught irregularities. In those instances she sought explanations from Mrs. Mathurin, the ID and the CRO.
- [22] During September 2003, the accounts division was moved from Police Headquarters to the Police Credit Union building. There was one safe at the Police Headquarters and the only persons with access to the safe were Mrs. Mathurin and herself. When the division was moved, a new safe was purchased and installed for the division's use. There were problems with the new safe and when they had these problems the money would be put in her drawer or in the old safe at the Police Headquarters. She could not get the new safe open on October 28<sup>th</sup> 2003, when the officers from the Director of Audit were conducting their survey and so she telephoned Renwick & Company with a request that they visit to open the safe but they did not come until after the officers had departed. The safe was opened the Friday of the week of Jounen Kweyol. Only present at the opening were the Renwick & Company staff and herself. When the safe was opened there were 2 envelopes therein each containing a sum of money for the 18<sup>th</sup> and 30<sup>th</sup> September 2003. There were no slips with markings to say whether the money was from the CRO or the ID.
- [23] In relation to the survey on October 28<sup>th</sup> 2003, and whereat it was discovered that money received from the ID on the 18<sup>th</sup> and 30<sup>th</sup> September 2003, had not been deposited into the bank as late as October 28<sup>th</sup> 2003, the facts were (1) she was not aware of the money that came into the division on those days as Mrs. Mathurin was the person who dealt with the money on those days, (2) Mrs. Mathurin was on sick leave prior and then was asked to proceed on 140 days vacation leave from October 1<sup>st</sup> 2003, without her returning to office and there being a handing over by Mrs. Mathurin to her of anything in her desk, (4) the money for the 18<sup>th</sup> and 30<sup>th</sup> September 2003 was not recorded in the cash book and so even if she had checked the cash book she would not have known about the money in the safe,

(5) the division was in transition from the Police Headquarters to the Police Credit Union building and so many materials had still not been unpacked, (6) Ms. Collymore was doing Mrs. Mathurin's job of collecting and depositing money from the ID and CRO, (7) at the time of the survey she was operating with a staff of 3 persons and was overwhelmed with work which included preparation for the Government's annual budget, (8) she did not have the opportunity to carry out her usual control test during the first week of October 2003, because for the month of September 2003, the three (3) staff in the division was inundated with the responsibilities of the 8 persons who were previously in the division, (9) she had brought to the Commissioner of Police's attention that the division was short staffed. As a result of the staff shortage she felt like an "octopus".

[24] It was put to her that she had said to the officers from the Director of Audit that there was "no cash on hand" and was asked what was her understanding of term "cash on hand". She said that she understood "cash on hand" to mean:

"Cash on hand, cash in my possession that I can account for or cash that is supposed to be in my possession."

She agreed that if there was money that had been received but not yet deposited in the bank that it could be counted as "cash on hand". She said that she had stated to the officers that she had no cash in her possession and she meant in her possession such as in her drawer on in the old safe. She couldn't say at the time whether there was money in the new safe as she didn't know what was in the new safe. She had not put any money in the new safe. If money was put in the new safe by Mrs. Mathurin, she would have expected Mrs. Mathurin to have deposited the money.

[25] When asked if there was a record of money that was supposed to be in the safe? She responded:

"No, You don't even know what is in the vault. The person comes, they bring in the cash, they go to the Assistant Accountant I. The Assistant Accountant I signs for that. The cash goes in the vault. The next day or whatever day the Assistant Accountant opens the vault, takes the money and deposits it. It may not be to my knowledge as Accountant because the Assistant Accountant has her responsibility."

[26] When asked if when money got to the division if there was a counter for it, she replied:

" No the only thing we have is that."

And when it was put to her that such doesn't give a detail of the amount, she said:

" No it doesn't give the detail. It just says the amount. It says the date the person brought in the money, the receipt numbers, the cash the person brought in, where was the money sent to, it was sent to Accounts, the person who brought the money signs and the person who received the money signs for receiving it."

[27] It was put to Ms. Martial whether it would not have been advisable for her to have someone from the Audit Department present when the safe was being opened? She said that it didn't come to her mind to ask. She informed her supervisor that she had found two (2) envelopes but did not know what they were about and so she would have to check with the ID and CRO to verify the source and deposit. She was aware from the Head of her Department that the Audit Department had written to the Head of her Department indicating the missing money. When the money was found, her Head of Department wrote back to the Audit Department that the money had been found and Audit Department in turn sent communication to say to ensure that the money was accounted for and to disregard their note.

#### **The PSBA's evidence**

[28] The PSBA's evidence was given by affidavit of Mr. Vern Gill, the Chairman. He denied that the delay of one (1) year three (3) months was detrimental to good administration or an abuse of power or caused the decision to be unsafe or unreliable. The delay was due to the several hearings before the PSBA. He denied that the PSBA rubber-stamped the PSC's decision and asserted that the PSBA was entitled to accept or disregard any of the PSC's findings. Further the PSBA was only entitled to address its mind to the issues or grounds of appeal which were salient or germane to the proper disposal of the appeal before it. It was a fact that Ms. Martial had breached regulation 45 of the Financial Regulations by not being able to account for money received on behalf of the Government. The

PSBA was also bound by its prior decision in **Enrico Lewis v. Public Service Commission**<sup>2</sup> and therefore the **Wednesbury**<sup>3</sup> principle did not apply.

[29] The evidence of Mrs. Arlette Hyacinth, before the PSC was straightforward. At the time of the surprise survey Mrs. Martial was the accountant. The surprise survey was carried out by officers in her office. It was reported that there was no cash on hand by Mrs. Martial to the officer from her office. She received a report from her officers that Ms. Martial had had difficulty in opening a recently acquired safe and without examination of the safe there, the officers could not see if there was no cash on hand. In regards to who ought to have the combination for the safe, she responded that management should have that combination. She interpreted the phrase “no cash on hand” to mean “no coins, no dollar bills, no cheques, nothing” and said that cash on hand nothing to do with the location of the money. As long as an officer could produce cash, it was cash on hand and the property of the Government of Saint Lucia. She believed that as a Government accountant that Ms. Martial knew what the term “cash in hand” meant. All Government and revenue collecting offices were required to maintain a cash book in which they ought to be recorded the daily cash intake. Receipts collected should be entered in the cash book on a daily basis and also paid on a daily basis into the bank or to the Accountant General. The phrases cash book and cash register were used interchangeably. She said that the money which they arrived at as missing was from totals found in the receipt book. She said the money when received was recorded in 3 different documents, the ID would record in receipts, and then record the receipts in a cash register for delivery to the Police accounts division, and Ms. Martial division would have a cash book to record the receipts and money received from the ID. While money should be paid in daily to the Accountant General she observed from Ms. Martial's prepared statement that money was kept on hand before it was deposited into the bank. The money ought to have been deposited the following day. She presumed that it would be the Accountant's responsibility for depositing the money as money kept on hand was the responsibility of the

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<sup>2</sup> Appeal No.7 of 2007.

<sup>3</sup> Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223.

Accountant and any time that money was being kept on hand there would be procedures and the Accountant would play a main part in the procedures. The evidence of Mrs. Hyacinth was not challenged by cross-examination.

[30] Ms. Marie-Ange Louis said that at the time of the survey, the bulk of the revenue came from the ID and that department brought over the money collected at the end of each day. The Police accounts division carried out the procedures necessary for takeover of the money. At the time the money was taken over by the accounts division, the accounts division would not necessarily deposit it in the bank at the end of every day but rather money was deposited intermittently. This was the norm. Her experience was that where they held money in the custody of the division for extremely long periods some of it actually went unaccounted for over time. Subsequently both the Audit Department and the Accountant General had written to the Ministry of Justice about the delayed deposits and asked that deposits be made on a more regular basis. She subsequently requested that the procedure of a night deposit bag be instituted on a daily basis. She had no knowledge about the existence of a money register or a cash book. Her recollection was that the Finance Act stated that funds were to be deposited on a regular basis.

[31] When asked "What is the meaning of cash on hand in the context of accounting?" She responded: "There's no cash in the department."

[32] She said that she only knew that the money had been deposited in the bank from a verbal report to her and the reporting officer had said that the money was given to her by Ms. Martial. She did not record this report in writing as the reporting officer did not want her name disclosed. As far as she could recall Ms. Martial was in office when the deposits were made in the bank.

[33] When asked about where the money could have come from, she said that the report before the PSC stated that when the survey was done, it was reported that there was no money, and no money was available and then one week later the exact amount of money was deposited. She could not say where the money came

from. She did not know where the money came from. One deposit slip bore the depositor's name as being Ms. Martial and on the other depositor's slip, the name was illegible.

[34] When asked who was responsible for reconciling the deposits, she stated that all correspondence that went to the division would go to the Accountant and the Accountant would delegate responsibilities. She therefore could not say who the officer was.

[35] When asked whose responsibility was it to account for the money collected in the division, she responded that according to the Finance (Administration) Act, the person responsible for all the revenue of the division was the Permanent Secretary but there was the Head of a Department who was part of the Ministry and on a day to day basis operationally, the Accountant was the Head of the Accounts division and was therefore responsible for the deposits.

[36] Under cross-examination, when asked if she could say as a fact that the funds had not been accounted for, or were missing funds, Ms. Louis said that she relied on the audit report on the issue of missing funds.

[37] She wrote a report on December 19<sup>th</sup> 2003, to the Ministry of the Public Service about her findings based on the information that was before her from the Department of Audit, and the Accountant General's Department post the surprise survey. She had included a number of observations about Ms. Martial. She felt duty bound to report the findings. She did not conduct an investigation of her own before writing her report.

[38] She denied having any personal issues with Ms. Martial. It was put to her that in her report of December 19<sup>th</sup> 2003, she had said that an accountant who was given the responsibility to manage funds ought to be honest, have high moral values, be of high integrity and be of irrefutable good character, and that based on the allegations from the Department of Audit against Ms. Martial, it could not be said that Ms. Martial fit the criteria and therefore implied that Ms. Martial was not honest. She denied her statements meant that Ms. Martial was dishonest,

she simply meant that she did not meet the criteria of an accountant managing funds. She agreed when it was put to her that her statement did question the moral values, integrity and whether Ms. Martial was of good character. She said that she made no allegation that money had been stolen.

[39] When asked where did she get the element of dishonesty from, and how does it come in, she said there was conducted the surprise survey at which the money was not found and thereafter the money was deposited. It was this that raised question, but she was not saying that anybody in particular was dishonest.

[40] It was put to her that she said in her report to the PSC, that subsequent to her (Ms. Martial) departure and or compulsory leave which began November 24<sup>th</sup> 2003, the Ministry of Justice had made arrangements for the proper staffing of the Police accounts division and that the results of this has been nothing short of "magnificent" and was asked what changes she had made? She responded that some of the changes were a new Accountant, the financial analyst who oversees the accounting matters for the entire Ministry. The new Accountant, Ms. Stava had put systems in place and dealt with long pending matters involving payments, and sorted out for example the insurance coverage on the Police vehicles. When asked if there was any increase in staff, she said that she could not answer unless she had her report.

[41] When it was put to her that all she did was bring in a new Accountant who was honest and everything was magnificent, she replied it was somebody who was managing the department's workload, ensuring proper procedure, and that systems were in place to accomplish the tasks.

#### **Submissions for Ms. Martial**

[42] Counsel submitted that Ms. Martial was of the view that the PSBA merely rubber-stamped the decision of the PSC and therefore failed in its appellate duty as a body of rehearing. Further, the decision contravened the law in 7 respects and was arrived at while the tribunal committed acts of procedural impropriety and acted unreasonably.

- [43] The first proposition was that the PSBA abused its power and acted unreasonably when it took one (1) year, three (3) months and three (3) days to render its decision after it heard the appeal. Section 96 of the Constitution of Saint Lucia gave the PSBA the power to hear appeals and so its function was constitutional. The purpose of the PSBA was to promote good administration and Ms. Martial believed that good administration demanded that the disciplinary proceedings conducted in relation to public servants should not be dragged out, not costly to the Crown as the public servant was being paid while proceedings were being dragged out, and the Crown also lost the benefit of the service of the public servant. Good administration on the part of the public servant facing disciplinary proceedings meant that the decision about the public servant ought not to be languishing indefinitely. When one marries that the PSC took over three (3) years to act and give its decision with the PSBA's one (1) year three (3) months and three (3) days, it was over five (5) years, this all equaled an abuse of power.
- [44] The PSBA sought to give the excuse that it had many hearings and had to operate within constraints but it failed to give the number of hearings that it had to deal with and the details of the constraints facing it. The law was that the Crown could not use expense and administrative blunders as an excuse to justify delays in the system. The PSBA was in no better position than the Crown. He relied on **Felix Augustus Durity v. The Attorney General of Trinidad and Tobago**<sup>4</sup> for this proposition. He also referred to **Jerome Boodhoo (President) and Anr. v. The Attorney General of Trinidad and Tobago**<sup>5</sup> on the issue of delay in delivery of decision and the distinction to be drawn between a matter that is yet to be heard, and one that has been heard but there is a failure to render decision and **Winston Cable v. The Attorney General**<sup>6</sup> which said that decisions should be rendered within 3 months and in a complex cases within 6 months.
- [45] Counsel submitted that the delay affected the quality of the decision. Firstly, there was an irrelevant consideration taken into account by the PSC in coming to its

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<sup>4</sup> Privy Council Appeal No. 52 of 2000.

<sup>5</sup> Privy Council Appeal No. 8 of 2003

<sup>6</sup> CCJ Civil Appeal No. CV 2 of 2008/BB Civil Appeal No.34 of 1998

decision. Secondly, the tribunal was asked to consider the statutory definitions of (a) Head of Department, and (b) collector of revenue. These were the gravamen of the appeal because Ms. Martial never collected money, and so could not be considered a collector of revenue. The second contention was the way the charges were framed. The charges were seeking to make the Head of Department liable. The Head of the Department according to the legislation was the Commissioner of Police. Ms. Martial not being in either category, she was incorrectly before the PSC on these allegations. The PSBA either ignored these issues or never considered them altogether, and this was directly attributable to the delay. The PSBA's Chairman's affidavit failed to address this allegation and the law states that if someone does not answer an allegation it is because they have no answer or have forgotten the argument. He relied on **Thomas Frett v. Geoffrey Cobham**<sup>7</sup> to support this proposition. Every court of appeal had to consider every ground of appeal before it and say whether there was merit to it or not and so the same principle applied to the PSBA as it was an appellate tribunal.

[46] Counsel's second proposition was that the PSC failed to weigh the evidence and totally by-passed Ms. Martial's evidence. In this regard he referred to the PSC decision page 3. If the PSC took the position that Ms. Martial's evidence was not credible, it was ought to say so. The only time when the PSC was not entitled to weigh the evidence was if the allegation against Ms. Martial was one of strict liability.

[47] The PSBA was asked to rehear the matter and so they had the task of doing what the PSC failed to do. The action of the PSBA was seen by reference to page 4 paragraph 3 of its decision. Counsel said there were 2 things wrong with this approach. Firstly, the error was no review, the PSBA never went back to the evidence, and never weighed the evidence, and so there was no review. Secondly, the PSBA fell into the same trap as that of the PSC because it did not give reasons why it agreed with the PSC's decision. The PSBA was therefore on tenuous ground because the PSC position was procedurally wrong, and so this

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<sup>7</sup> Tortola Civil Appeal 9 of 1995

made the PSBA's decision wrong. Support for this proposition was to be found in **Lucky v. Tewari and Anr.**<sup>8</sup> The PSBA must give reasons for its decision and if not accepting Ms. Martial evidence, it must say why not. Since the PSC never gave reasons, it was not open to the PSBA to simply say that it adopted the findings of the PSC. The PSBA was therefore in error when it came to the law as to how it ought to function, namely it was to weigh and assess the evidence before coming to its conclusion.

[48] Counsel submitted that the evidence of Mrs. Arletta Hyacinth was used to find the allegations proved against Ms. Martial. Mrs. Hyacinth's evidence however, only showed that a surprise survey was carried out on the Police accounts division, that officers in her department spoke with Ms. Martial and they asked if there was any cash on hand, Ms. Martial tried to open the safe but it could not be opened, that there were official receipts for money received but there were no entries in the accounts division cash book to indicate any cash on hand, and Ms. Martial concluded that she had no cash on hand.

[49] Ms. Martial informed both Mrs. Hyacinth and the PSC that it was not her function to collect money and that on the date of the surprise survey, Mrs. Mathurin, the person responsible for collecting money was on leave and as she could not get the safe open, therefore she could not verify if there was anything in the safe, that the division formerly had a staff of 8 but 5 of those persons were either sent on leave or transferred leaving 3 persons and so the division saw the 3 persons inundated with work, and it became dysfunctional. Further, the safe was subsequently opened and the money was located. Ms. Martial's evidence was cogent and uncontroverted. There was nothing in the legislation that stated that the allegations were of strict liability.

[50] Despite all that Ms. Martial said about the division being dysfunctional before the PSC, the PSC took the position that Ms. Martial had reneged on her responsibility and this is what the PSBA adopted. Ms. Martial was removed from office although she was not responsible for the cause of the division to becoming dysfunctional.

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<sup>8</sup> (1965) 8 WIR 363 Privy Council

- [51] In adopting PSC's error, the PSBA was in itself in error, and so there was a procedural error in reaching its decision.
- [52] Ms. Martial's third proposition was that regulation 45(1) of the Financial Regulations and the Finance (Administration) Act provided certain definitions for example "collector of revenue" and "accounting officer". The "accounting officer" was the Permanent Secretary or the Head of Department. The problem with the allegations he said was that Ms. Martial was not a collector of revenue, the collector of revenue was Mrs. Mathurin. Ms. Martial had no part in the collection of revenue. Further, nothing was even given to Ms. Martial after Mrs. Mathurin collected the money. This was the first problem with the charge.
- [53] The PSC decision at page 3 paragraph 2 states that Ms. Martial had overall responsibility as Head of the Accounting Department. She was not the Head of the Accounting Department, the Commissioner of Police was Head of the Department and therefore she was not the proper party to the charge as Head of Department. She was answerable to the Commissioner of Police, he was her functional boss and Head of the Department, this was the evidence before the PSC. She was also not a permanent secretary. Under none of the definitions of the responsible officers was she the correct officer to answer the allegation. Therefore PSC's findings against her on this ground were wrong in law and wrongly adopted by the PSBA.
- [54] The fourth proposition was the 2 allegations for failing to account for the money missing when the audit was conducted. Reference was made to the brushing aside of her evidence explaining the situation. A second contention under this proposition was that something had to exist before it could be described as missing. The failing to account was at the time of the surprise survey. The evidence of both Mrs. Hyacinth and Ms. Martial showed that there was no indication that the money existed and the safe could not be opened. Mrs. Hyacinth could not say the money was missing. Ms. Martial was put to answer an allegation made in hindsight after the money was discovered and found to not have been deposited for some time.

[55] Ms. Martial 's fifth proposition was that the PSC took into consideration an irrelevant consideration in arriving at its decision. Ms. Martial was asked if she had any cash in hand, and she said no case in hand meaning she had no cash in her hand. The PSC chose to adopt the definition of Mrs. Hyacinth as the guide to what cash in hand meant. Counsel said that he was unsure whether there was any difference in a material way. Having accepted Mrs. Hyacinth's definition of cash in hand the PSC then at page 3 paragraph 3 of its decision said that it was disturbed that she chose to put her own definition on the term "cash in hand" and saw it as an attempt by Ms. Martial to circumvent her responsibilities. In effect, as Ms. Martial chose the wrong definition, she was liable for a wrong definition. The issue at the time was whether Ms. Martial failed to account for money received on certain dates and it had nothing to do with the definition of a term. This irrelevant ground formed part of the decision, and so makes the decision liable to review.

[56] The sixth proposition was on the type of punishment metered out by the PSC. Ms. Martial's position was that the punishment of summary removal was unjust and harsh. For even taking the case against her to the highest, it was one of negligence and not ill-discipline. Negligence because if one wanted to target Ms. Martial as the supervisor, the PSC recognized that things that ought to be done, were not done by her but rather by another. The question was however, could she be negligent where the division was made dysfunctional by inadequate staffing and staff had to multitask. Can negligence be proved against that background? There were therefore no grounds for removal, and no ill-discipline.

[57] Further Counsel said, the case of **Enrico Lewis v. Public Service Commission**<sup>9</sup> which was used as the benchmark for removal of public servants who are in charge of a Government department on the question of failing to account, could not be applied carte blanche. The PSC and PSBA ought to look at the individual case before applying the punishment.

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<sup>9</sup> PSBA Appeal No.7 of 2007

[58] Counsel said that there were 6 distinguishing features between the **Enrico Lewis**<sup>10</sup> case and Ms. Martial 's case. Firstly, Ms. Martial never received the money, whereas Mr. Lewis collected the missing money and at the end of the day he received all and kept it, secondly, Ms. Martial had no banking duties, and Mr. Lewis was responsible for banking the money, thirdly, Ms. Martial was not a collector of revenue as defined by the Finance (Administration) Act, but Mr. Lewis was a collector of revenue as per the said Act, fourthly, on the date of the surprise survey, Ms. Martial told the officers that she had no cash in hand, whereas on the day when Mr. Lewis was confronted by the auditor, he had no explanation to give them, fifthly, at the hearing before the PSC, Ms. Martial testified as to matters on the day of the audit and explained what happened, whereas, Mr. Lewis when he was before the PSC he gave no evidence, thus no explanation for a sum in excess of \$50,000.00, and sixthly, in Ms. Martial 's case, the money was subsequently found in the safe and deposited, but in Mr. Lewis' case, the money was never accounted for or appeared for to have been found. Therefore, the PSC and the PSBA properly applying its mind to the factual matrix of the 2 cases could not come to the conclusion that the **Enrico Lewis**<sup>11</sup> case and Ms. Martial's case were of the same factual matrix. Counsel said that the PSC having concluded that it couldn't separate Ms. Martial's case from the **Enrico Lewis**<sup>12</sup> it had to apply the same penalty, therefore the removal of Ms. Martial was irrational and ought not to stand but be quashed. Reference was made to **Dr. John Allan Walker v. The Royal College of Veterinary Surgeons**<sup>13</sup> and **John Brennard Williams v. The Royal College of Veterinary Surgeons**.<sup>14</sup>

[59] Ms. Martial 's contention was that she was not properly removed from office. The adoption of the PSC's decision was improper and wrong and so the decision of the PSBA should be quashed. The effect of quashing the decision would mean that the PSBA decision would be null and void and therefore Ms. Martial would still

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<sup>10</sup> Ibd

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Privy Council Appeal No. 16 of 2007 paras.13 and 14.

<sup>14</sup> Privy Council Appeal No. 92 of 2007 para.13

occupy her post in the public service and this entitled her to all of her financial benefits that she should have received but for the unlawful removal. In this regard Counsel referred the Court to **Dr. Astley Mc Laughlin v. His Excellency the Governor of the Cayman Islands**.<sup>15</sup>

[60] Counsel also submitted that Ms. Martial was asking for costs as this was a special case. She had undergone substantial hardship from the first day she was sent on leave, when she returned she was suspended and further she had to wait approximately 5 years for the PSC and PSBA to bring final resolution to the matter.

#### **Submissions for the PSBA**

[61] On the issue of delay, Counsel for the PSBA said that the delay was not inordinate, prejudicial or an abuse of power for the following reasons: (a) nothing contained in the Constitution, the Public Service Board of Appeal Act and the Public Service Board of Appeal regulations created a timeline within which the PSBA was to deliver its decision, (b) the PSBA being an autonomous and independent institution established by the Constitution was independent from any person or authority when exercising its functions under the Constitution, (c) the PSBA had the authority to make regulations governing its procedures for the hearing of appeal before it and there being no regulations governing the appropriate time within which a decision was to be delivered, it could not be properly argued that a power existed let alone that there was an abuse of power, (d) the PSBA was separate and far removed from the PSC and therefore not accountable for the delay before the PSC or the length of time that it took the PSC to investigate and determine the matter. In support he referred suit **SLUHCV2005/0301 Antonia Martial v. The Public Service Commission** where Shank J. at paragraph 4 – 8 where the Judge said that without some specific evidence of prejudice, he did not think that the passage of a few years could be said to be so long as to prevent a fair hearing. He also asked the Court to note the

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<sup>15</sup> Privy Council Appeal No. 83 of 2006

time frames in **SLUHCV 2006/0334 Lyndon Cooper v. Public Service Board of Appeal**. Therein Cottle J did not address his mind to the issue of delay at all.

[62] Reference was made to paragraph 10 of Ms. Martial's affidavit, wherein she stated that the delay of one (1) year three (3) months and three (3) days was an abuse of power and this made the decision unsafe. Counsel submitted that this was a woefully misplaced contention and failed to state the precise power which the PSBA was mandated to exercise, omitted to exercise and the statutory parameters of that power. The PSBA's position was that Ms. Martial was asking the Court to substitute its findings for that of the PSBA. This proposition was untenable as the PSBA was an independent body established by section 95 of the Constitution. The PSBA sat and heard the evidence before it, viewed the demeanour of the witnesses and came to a conclusion which it found to be reasonable.

[63] Counsel said that it did not lie in the mouth of Ms. Martial to say no effort was made to weigh the evidence and that hers was a bold assertion without more as Ms. Martial did not state in her affidavit exactly which aspect of the evidence she was challenging. In reality Ms. Martial was asking the Court to go on a fishing expedition and delve into the back of the PSBA to find evidence favourable to her and this of course the Court could not do. It was not for the PSBA to advance any reason why the evidence was not accepted as there was no statutory reason or otherwise to do so.

[64] Counsel referred to paragraph 11 of Ms. Martial's affidavit wherein she alleged that the essence of her Counsel's submissions before the PSBA had been forgotten or by-passed. She ascribed this to the delay between the hearing of the appeal and the rendering of the decision. The PSBA he said had only to put forth that which it thought to be germane and salient to the issues at hand and render a decision that was fair and in keeping with the rules of natural justice. He referred to **SLUHCV 2006/0334 Lyndon Cooper v. The Public Service Board of Appeal** paragraph 13 and said that the same issues were raised about addressing all grounds and Cottle J held that a failure to repeat all the arguments in the decision

did not indicate that the arguments were not considered. The decision merely refers to the ratio decidendi, the main reason why the PSBA upheld the decision of the PSC.

[65] In relation to the issue of unreasonableness and irrationality, he said that Ms. Martial appears to be saying that the whole decision seems to have come down to the definition of “cash on hand”. This was a bold assertion, and the decision of the PSBA on page 3 said that the evidence in relation to “cash on hand” led to a finding of fault and this was untenable. Unreasonableness was well defined and described in the principle **Wednesbury** unreasonableness. He asked the Court to refer to **Associated Provincial Picture Houses Limited v. Wednesbury Corporation**.<sup>16</sup> To plead irrationality as Ms. Martial did at paragraph 14 of her affidavit, it was said there must be (a) bad faith or, (b) improper motive on the part of the decision maker.

[66] The PSBA’s submission was that even if Mrs. Hyacinth’s definition of “cash on hand” was accepted by the PSBA, to assist in arriving at the decision, it was not the only or main evidence used in arriving at the decision. The power of the PSBA pursuant to section 96(3) of the Constitution was to affirm, set aside and make any other order. Based on the evidence before it, the PSBA being a tribunal of rehearing, it came to the conclusion as was just in the circumstances. The decision of the PSBA said at page 3 paragraph 4 that the record was reviewed. Therefore, it did not lie in the mouth of Ms. Martial to say that the PSBA had rubber-stamped the decision.

[67] Counsel submitted that Ms. Martial made much of the **Enrico Lewis**<sup>17</sup> case by setting up 6 differences between that case and Ms. Martial’s case. The PSBA’s position was that the underlining factor in both cases was that money belonging to the Government was not accounted for and in Ms. Martial’s case she was supervisor and so “the buck stopped with her.” It therefore did not lie in the mouth of Ms. Martial to lay out differences between an accounting officer, or a collection

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<sup>16</sup> [1947] 1 K.B. 223

<sup>17</sup> Ibid.

of revenue officer. She was responsible and she failed as Head of Department with overall responsibility. Regulation 45(1) of the Financial Regulations was clear and did not need further interpretation and it was consistent with the decision of the PSBA. Ms. Martial's actions breached regulation 45(1) and her conduct was inconsistent with her obligations and contract of employment and this warranted dismissal. Reference was made to **Pearce v. Foster and Others**<sup>18</sup> where the Court said that if an employee's conduct was inconsistent with the faithful discharge of his duties, it was misconduct warranting his immediate dismissal.

**Law:**

[68] The power of the PSBA on appeal is set out in the Constitution:<sup>19</sup>

"(3) Upon an appeal under this section the Board may affirm or set aside the decision appealed against or may make any other decision which the authority or person from whom the appeal lies could have made."

[69] On the ground of relevant and irrelevant consideration, **In Re Duffy**<sup>20</sup> Lord Carswell said:

"the Secretary of State was bound to have regard to the proper factors, and not to have regard to any other improper factors, in reaching his decision"<sup>21</sup>

**In R (Alconbury Developments Ltd.) v. Secretary of State for the Environment Transport and the Regions**<sup>22</sup> Lord Slynn said:

"if the Secretary of State... takes into account matters irrelevant to his decision or refuses to or fails to take account of matters relevant to his decision... the court may set his decision aside"<sup>23</sup>

[70] On the ground of abuse of power the Court is guided by **R. Secretary of State for the Environment, ex p Nottinghamshire County Council**<sup>24</sup> where Lord Scarman said:

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<sup>18</sup> 17 Q.B.D 536 , 539 and 542

<sup>19</sup> The Saint Lucia Constitution section Chap. 1.01, section 96 (3)

<sup>20</sup> [2008] UKHL 4 at [53]

<sup>21</sup> Michael Fordham QC, "Judicial Review Handbook" 5<sup>th</sup> Ed. para.56.1

<sup>22</sup> [2001] UKHL 23, [2003] 2 AC [50]

<sup>23</sup> Ibid.

<sup>24</sup>

"The ground upon which the courts will review the exercise of an administrative discretion by a public officer is abuse of power. Power can be abused in a number of ways: by a mistake of law in misconstruing the limits imposed by statute (or by common law in the case of a common law power) upon the scope of the power; by procedural irregularity; by unreasonableness in the **Wednesbury** sense; or by bad faith or an improper motive in its exercise"

[71] Both Counsel made submissions on the issue of whether or not the PSBA ought to give reasons for its decision. In **R. v. Secretary of State for Education ex p G**<sup>25</sup> Latham J said:

"In a series of cases during the last year, to which I have referred, it is apparent, that whilst there is a spectrum of factual situations ranging from those where no reasons are required at all on the one hand, to those where the circumstances are such as to cry out for full and detailed reasons, the general approach has been to require there to be sufficient reasons to be given to determine whether or not the decision-maker has asked the right question and approached it in an apparently rational way... the duty to give reasons was in truth an aspect of the duty to act fairly, in other words it was not a freestanding duty...in any given case, what might appear to the uniformed observer to be a statement of a conclusion, will be to the person concerned with the way in which a dispute has developed, a full and sufficient explanation of the reason for the decision."

In **Padfield v. Minister of Agriculture Fisheries & Food**<sup>26</sup> Lord Upjohn said:

"if he does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly."

In **R v. Secretary of State for Trade and Industry, ex p. Lonrho Plc.**<sup>27</sup> Lord Keith said:

"The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who gives no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision."

In contrast to a court, a judge owes a general duty to give reasons.

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<sup>25</sup> [1995]ELR 58 at 67 E-F

<sup>26</sup> [1968] AC 997, 1061G- 1062A

<sup>27</sup> [1989] 1 WLR 525, 539-540B

[72] On the issue of judicial review for an error of law, the Court is guided by *R (Q) v. Secretary of State for the Home Department*<sup>28</sup> where Lord Phillips said:

“...courts of judicial review have been competent since the decision in *Anisminic* [1969] 2 AC 147 to correct any error of law whether or not it goes to jurisdiction;”

[73] On the issue of delay in delivering the decision, reference is made to ***Jerome Boodhoo and Anr. V. the Attorney General of Trinidad and Tobago***<sup>29</sup> where Lord Carswell said:

“11. The Court of Appeal held that in principle an excessive delay in giving judgment could infringe the section 4(6) rights of a litigant. De la Bastide CJ went on to say at page 12 of his judgment:

‘For there to be an infringement of this right, the delay in delivering judgment must, in my view, be of such an order as would really make a mockery of a person’s right to have a determination of a matter by the competent court or tribunal.

It is hardly necessary to say that different considerations apply to cases of delay in giving judgment from those concerned in cases of delay in affording a hearing. In the latter type of case the evidence which is to be adduced may no longer be reliable or the testimony of essential witnesses may not be obtainable. In the former, of which *Goose v. Wilson Sandford & Co.* (The Times, 19 February 1998) provides an example, delay may have so adversely affected the quality of the decision that it cannot be allowed to stand. It may be established that the judge’s ability to deal properly with the issues has been compromised by the passage of time, for example if his recollection of important matters is no longer sufficiently clear or notes have been mislaid. These are, however, extreme cases, ordinarily associated with inordinately long periods of delay. In his judgment in the present case de la Bastide CJ referred to the setting of target times, ...’

12. In their Lordships’ opinion delay in producing a judgment would be capable of depriving an individual of his right to the protection of the law, as provided in section 4(b) of the Constitution of Trinidad and Tobago, but only in circumstances where by reason thereof the judge could no longer produce a proper judgment or the parties were unable to obtain from the decision the benefit which they should. Their Lordship do not think it profitable to attempt to define more precisely the circumstances in which this may occur or to specify periods of delay which may bring about such a result, since cases vary infinitely and each has to be considered on its merits, applying this principle.”

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<sup>28</sup> [2004] QB 36 at [112]

<sup>29</sup> Privy Council Appeal No. 8 of 2003.

[74] In **Winston Campbell v. The Attorney General**<sup>30</sup> the Honourable Mr. Justice Wit said:

"[19]... it is unfortunate that we cannot overlook that Waterman J took three years to deliver his judgment, while the Court of Appeal took almost four and a half years, despite section 18(8) of the Constitution conferring upon litigants the right for their case to "be given a fair hearing within a reasonable time" which necessarily requires that the judgment in the case be given within a reasonable time...

[20] Subsequently in *Reid v. Reid* (where there had been a similar delay of four years ten months) Saunders J, on behalf of the CCJ stated, "In our view, no judgment should be outstanding for more than six months and, unless a case is one of unusual difficulty or complexity, judgment should normally be delivered within three months."

[75] Ms. Martial relied on the **Wednesbury**<sup>31</sup> principle where Lord Greene M.R. said:

"What, then, is the power of the courts? They can only interfere with an act of executive authority if it be shown that the authority has contravened the law...

The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take matters which they ought to take into account. Once the question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."

[76] The Finance (Administration) Act<sup>32</sup> provides:

**"Definitions**

2. In this Act –

"accounting officer" means a public officer specified in section 6 who is accountable for –

- (i) the funds appropriated under any head of expenditure for Saint Lucia in any financial year;

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<sup>30</sup> CCJ Appeal No. CV 2 of 2008/BB Civil Appeal No.34 of 1998

<sup>31</sup> *Associated Provincial Picture Houses, Limited v. Wednesbury Corporation* 1947 I K.B. 223, 233, 234

<sup>32</sup> Chap. 15:01

- (ii) the collection of any revenue under the revenue heads to which that public officer is designated; and
- (iii) the use and custody of public monies, stamps or stores relating to the service for which such revenue heads are established;

“collector of revenue” means a public officer responsible for the collection, receipt, and custody of public monies.

“receiver of revenue” means the Accountant General or any other officer designated by him or her for the purpose of receiving monies, securities or other financial instruments collected by collectors of revenue.

### **Accounting officers**

6.(1) The accounting officers for the purpose of this Act shall be –

(a) the Permanent Secretaries, or

(b) public officers who are Heads of Department or who perform the duties of a Head of Department.

(2) ...

(3) An accounting officer may designate an officer under his or her control to be the collector of revenues for the collection of any item of revenue for which he or she is accountable.

(4) The designation of a collector of revenue under subsection (3) for the collection of any item of revenue shall not abate or abridge the personal accountability of the accounting officer making the appointment in respect of that item of revenue.

[77] The Financial Regulations<sup>33</sup> provide:

### **Interpretation**

“2. (1) In these Regulations –

“department” means a Ministry or a non ministerial department of Government

“head of division” means an officer who is in charge of a division of a department;

“sub-accountant” means an officer who is entrusted with the receipt, custody and disbursement of public money and who is required to keep one of the recognized cash accounts, the transactions in which are

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<sup>33</sup> Statutory Instrument, 1997, No. 36.

accounted for to the Accountant General and subsequently embodied in the final public accounts of Saint Lucia.

### **Accounting officer**

5. (1) Subject to section 6 of the Act, an accounting officer shall be responsible for ensuring that –

(a) the financial business of Government for which he or she is responsible is properly conducted;

(b) the public funds entrusted to his or her care are properly safeguarded and are applied only to the purposes approved by Parliament;

(c) all payments from the votes or funds under his or her control are properly authorized;

(d) any information required by the Accountant General and the Director of Audit concerning his or her accounts is promptly made available;

(e) departmental records are maintained in accordance with these Rules and any other accounting instructions issued by the Accountant General;

(f) an efficient system of internal control with respect to all financial transactions is maintained;

(g) his or her financial and accounting records are produced for audit on demand of the Director of Audit.

(2) An accounting officer shall respond promptly to any query addressed to him by the Accountant General and the Permanent Secretary, Personnel, any incompetence or repeated carelessness on the part of a subordinate officer involved in the collection, expenditure and accounting for, public funds.

### **Accounting unit**

9. (1) There shall be an accounting unit in each Department under the overall supervision of the accounting officer.

(2) The accounting officer shall ensure that proper arrangements are made in the unit for the disposal of its work.

### **Sub-accountant's accounts**

24. (1) Every sub-accountant shall maintain records as may be required by the Accountant General.

(2) Every sub-accountant shall balance his or her cash account daily, and details of the cash on hand at the close of business each day shall be shown in the cash register.

(3) A monthly reconciliation between the opening and closing cash balances and the totals of receipts and payments shall be prepared by each sub-accountant and endorsed in the cash register.

#### **Liability of collector of revenue**

39. Where any debt due to Government becomes unrecoverable and there has been unreasonable delay by a responsible officer in making a request or demand for payment or in instituting legal action for the recovery of such debt, such officer shall be liable under section 45(2) of the Act.

#### **Receipts to be issued to and by collectors of revenue**

45.(1) A collector of revenue other than a sub-accountant who receives any duties, taxes, licences, fees, levies, rents or other public monies, whether or not forming part of the revenues of the Government of Saint Lucia shall pay the whole of the amounts received daily either into a bank to the credit of the Consolidated Fund Services Account or to the Accountant General or to a sub-accountant and shall obtain a receipt for the amounts paid in.

(2) A collector of revenue shall issue an official receipt for each sum received by him except that, in the case of the Comptroller of Customs, a duly stamped, signed and numbered copy of a customs entry shall serve as a receipt.

#### **Receipts by other officers**

48. Whenever an officer or a person other than the Accountant-General, or sub-accountant or a collector of revenue receives public money he or she shall as soon as possible pay it to the Accountant-General or a sub-accountant or a collector of revenue and obtain a receipt for it.

#### **Custody of receipt forms**

62 (1) All revenue receipt forms of whatever description shall be secured in the custody of the collector of revenue or an officer authorized by him.

#### **Cash register to be maintained**

115. (1) An accounting officer shall ensure that a cash register is properly maintained for each bank account operated by him or her.

(2) Any sums paid into or out of the bank account shall be brought to account in the cash register immediately.

### **Dishonoured cheques**

123. In the event that a cheque accepted in payment of revenue or for any other service is dishonoured upon presentation, the accounting officer or collector of revenue accepting such cheque shall be responsible for taking appropriate action to recover the payment.

### **Findings:-**

- [78] While it appears that the PSBA's position is that it doesn't have to give reasons for its decision, it being bald of reasons as to why it accepted the PSC's decision, save and except for the matter of the personal cheques, the decision then leaves itself open to, as cited from the cases above, speculation that the PSBA had no good reason for reaching the conclusions that it did, and this allows the Court to draw its own inferences.
- [79] It seems to the Court that the description "department" was being used interchangeable with what ought to be properly described as a division in the Police Force, the accounting division. This was misleading as the legislation clearly sets different responsibilities for the Head of Department (who is also an accounting officer) and the Head of Division.
- [80] It appears to the Court that since there was a Deputy Permanent Secretary, Ms. Louis, (evidence being that there had not appointed a Permanent Secretary at the time) and a Head of Department, who was the Commissioner of Police, Ms. Martial could only be at best described as Head of Division. The Court is of the view that it is supported in this position having regard to the definitions of Head of Department, accounting officer<sup>34</sup>, and Head of Division.
- [81] The PSC relied on regulation 45(1) of the Financial Regulations to determine the culpability of Ms. Martial, and the PSBA too relied on regulation 45(1) when it said

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<sup>34</sup> Regulation 9(1) in fact lays overall responsibility for the accounting unit on the Permanent Secretary or Head of Department and pursuant to regulation 9(2) it is on the accounting officer or Head of Department that lays the responsibility to ensure proper arrangements are made for the disposal of work.

that it found no reason to interfere with the findings of the PSC. This calls for an interpretation of regulation 45(1).

[82] Regulation 45(1) is directed specifically at “collectors of revenue” other than a sub-accountant. The question then is was Ms. Martial or for that matter anyone under her supervision a collector of revenue? It is this Court’s position that neither Ms. Martial as Head of Division, or anyone under her supervision a collector of revenue.

[83] As the Court understands the day to day transactions connected to the issue before the Court, money was collected elsewhere by the respective officers at the ID and the CRO and then brought to the accounts division in the Police Department. It was the officers of the ID and CRO who completed transactions, received money and issued the official receipts. These are who the Court believes are the collectors of revenue. It appears to the Court that Ms. Martial accounting division was no more that a central processing division of money collected elsewhere.

[84] The Court feels supported in this position by having regard to the several provisions in the Financial Regulations pertaining to the duties, responsibilities and liabilities of the collectors of revenue and finds it difficult to slot either Ms. Martial or Mrs. Mathurin for that matter, into the role of collector of revenue.

[85] Regulation 39 fixes the collector of revenue with certain liabilities where he fails in making request or demand for payment or to institute legal action for Government money due. Nothing before the PSC or the PSBA or the Court appeared to fix Ms. Martial with this kind of liability.

[86] Regulation 45(2) fixes the collector of revenue with the mandatory duty of issuing official receipts for each sum of money received by him. Again nothing in the process described for receiving money from the CRO and the ID showed that there were official receipts issued. Ms. Martial division saw duplicates of official receipts issued by those other departments for the purpose of confirming the money they were to receive.

- [87] Regulation 62 places in the custody of the collector of revenue all revenue receipt forms. There was no evidence to show that Ms. Martial or any other officer in her division held these forms. As stated prior they only appeared to see the duplicates of the issued official receipts.
- [88] Perhaps regulation 123 best demonstrates who is a collector of revenue. It fixes the accounting officer (Permanent Secretary or Head of Department) or the collector of revenue who has accepted in payment a dishonoured cheque with the responsibility for taking appropriate action to recover the money on that cheque. Ms. Martial and Ms. Mathurin were only receiving cheques after someone else at either the CRO or the ID had made the decision to accept, and then accepted the cheque. Clearly the responsibility to take appropriate action ought not to rest on them to recover the payment of the dishonoured cheque in which they played no part in the decision to accept.
- [89] In light of the duties, responsibilities and liabilities attributed to the person who is a collector of revenue and which it has not been demonstrated are the duties, responsibilities and liabilities of Ms. Martial, the Court's finding is that there was an incorrect interpretation of "collector of revenue" and therefore the PSBA made an error in law when it adopted the PSC's finding that Ms. Martial was a collector of revenue and therefore in breach of regulation 45(1).
- [90] On the ground of delay in delivery of the PSBA's decision, the Court accepts Counsel for Ms. Martial 's submissions that some details could have been provided to substantiate the delay. If the Court were to accept the submission of Counsel for the PSBA it would mean that decisions could be pending ad infinitum. Such a position would not be sustainable and certainly could not be good administration. The Court is guided by the principle that a decision would be endangered by delay where the tribunal could no longer produce a proper decision or the parties would be unable to obtain from the decision the benefit which they should. The Court of is the view that Ms. Martial has not demonstrated this by evidence in relation to the PSBA's delay before the Court.

[91] On the ground of the unreasonableness and irrationality of the decision, the Court sees that firstly, a decision was made by some authorized person that the division required 8 persons to complete the duties therein and the division was staffed with 8 persons. This Ms. Martial said allowed her to complete her duties including a monthly check<sup>35</sup> during the first week of the following month on money received from the ID and the CRO. The staffing of the division then went from 8 persons to 3 persons within a very short period of time. Common sense would seem to suggest that there would have to be some impact on the division and a real possibility that the remaining persons would be “spread too thin” in attempting to complete all of the duties previous covered by 8 persons. Ms. Louis sought to suggest that with a new accountant, things moved to “magnificent” but then she said that she couldn’t say without her report whether there was an increase in staff. Her statement was therefore of no assistance in helping the Court assess whether its position that persons were “spread too thin” for all the duties is correct.

[92] The term “cash in hand” seems to have attracted much attention as Ms. Martial offered an explanation for how she interpreted the question when it was posed to her, and the Director of Audit said what it meant in accounting terms. The Court is of the view that the term is defined at regulation 24(3). The Court believes however, that Ms. Martial interpretation has to be examined against the background of how money was processed in her division, a division that had a long history of a particular manner or pattern of processing money received. Ms. Martial was not privy to money received by the division from the ID and CRO on a daily basis unless Ms. Mathurin was away from the division and Ms. Mathurin kept control of the money received and made arrangements for its deposit to the bank. Indeed Mrs. Hyacinth’s statement that her office determined that the money was missing from the ID receipts support Ms. Martial that even if she had looked in her division’s cash book, she would not have known money had been brought in, because it was not recorded by Mrs. Mathurin as coming in. It is also clear from the evidence of both Ms. Louis and Ms. Martial that there were no instructions for

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<sup>35</sup> Regulation 24(3) calls for monthly reconciliation.

money to be deposited daily before the surprise survey. What was also clear was that there was a memorandum of some sort from the Accountant General stating how often deposits should be made to alleviate what appeared to have been an inconsistent manner of depositing the money by departments. The Commissioner Mr. Frank Myers also said at the PSC hearing that there were similar words in a memo before the PSC signed by Mr. Barthelmy. Ms. Martial statement about how money was deposited once monthly when she worked elsewhere and Ms. Louis' statement about money from the ID being deposited intermittently also demonstrated the haphazard way in which the various departments or divisions deposited funds in the bank.

[93] Ms. Martial has not sought to deny her responsibility as supervisor for her division, but rather she appears to be saying that where she failed in her responsibility it was not wholly her fault but rather firstly, there was a shortage of staff, and as a result there was much multitasking going on especially by her, secondly, there was the system she met in the department whereby deposits were being made to the bank when it was convenient, thirdly, while she knew that the new safe had a problem when trying to open it, she was unaware that Ms. Mathurin had actually left money collected for the 18<sup>th</sup> and 30<sup>th</sup> September 2003, in the safe and which money was not recorded in the division's cash book.

[94] The court is of the view that in all the circumstances the findings against Ms. Martial were unreasonable and irrational.

### **Court's Order**

1. It is declared that Ms. Martial was not a collector of revenue and therefore she could not have been disciplined pursuant to regulation 45 (1) of the Financial Regulation.
2. It is declared that since Ms. Martial was not a collector of revenue and so could not be disciplined pursuant to regulation 45 (1) of the Financial Regulations, she was wrongly dismissed from the Public Service and it is ordered that she be paid all salary and benefits to her

due from March 5th 2008, until she is fully reinstated in the Public Service.

3. The PSBA and the PSC are to do all that is necessary to ensure that Ms. Martial is reinstated forthwith at an Account II posting.
4. Costs to Ms. Martial in the sum of \$14,000.00.

**Rosalyn E. Wilkinson**  
**High Court Judge**