

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2013/0405

**IN THE MATTER OF
THE CONSTITUENCIES BOUNDARIES COMMISSION**

and

**IN THE MATTER OF PURPORTED RECOMMENDATIONS AND
“CONSULTATIONS”
OF THE CONSTITUENCIES BOUNDARIES COMMISSION**

and

**IN THE MATTER OF
SECTIONS 40 AND 64 OF THE CONSTITUTION ORDER 1981
OF ANTIGUA AND BARBUDA**

and

**IN THE MATTER OF THE
CONSTITUENCIES BOUNDARIES COMMISSION GUIDANCE ACT 10/2012**

and

**IN THE MATTER OF AN APPLICATION FOR DECLARATORY
INJUNCTIVE AND OTHER RELIEF BY THE APPLICANTS,
THE HON. GASTON BROWNE, THE HON. LESTER BIRD, THE HON. ASOT MICHAEL
EISEN BAPTISTE, PAULET HINKSON
UNDER THE PROVISIONS OF SECTION 110 OF THE ANTIGUA AND BARBUDA
CONSTITUTION ORDER 1981 AND/OR THE GENERAL LAW**

BETWEEN:

**THE HON. GASTON BROWNE, LEADER OF THE OPPOSITION
THE HON. LESTER B, BIRD, THE HON. ASOT A. MICHAEL
MR. EISEN BAPTISTE, MS. PAULET HINKSON**

Claimants/Applicants

and

THE CONSTITUENCIES BOUNDARIES COMMISSION

First Respondent

and

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Second Respondent

and

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Third Respondent

and

THE PRIME MINISTER OF ANTIGUA AND BARBUDA

Fourth Respondent

and

**THE ATTORNEY GENERAL FOR AND ON BEHALF OF
HER EXCELLENCY THE GOVERNOR GENERAL**

Fifth Respondent

Appearances:

Mr. Anthony Astaphan SC, Mr John Fuller and Ms Samantha Marshall for the Claimants/Applicants.

Mr. Douglas Mendes SC and Mr. M. Quamina for the First and Third Respondents

Mr Justin Simon QC for The Second, Fourth and Fifth respondents

2013: October 18
December 4

Judgement

- [1] **Cottle, J.:** The Claimants filed the present constitutional motion seeking declarations and injunctive relief. A Constituencies Boundaries Commission was established under Section 63 (1) of the Constitution of Antigua and Barbuda. It produced a report which recommended that the boundaries of the constituencies, into which Antigua and Barbuda are divided, be altered. A commission was appointed in February 2012. It produced a first report. The present Claimants challenged that report, alleging inter-alia that the Constituencies Boundaries Commission had failed to adequately consult with interested parties. The Constituencies Boundaries Commission sought and received the advice of leading counsel. Based on that advice, the Constituencies Boundaries Commission

agreed that the consultation had been inadequate. The report was withdrawn and the Constituencies Boundaries Commission recommenced its work.

- [2] It is important to note that the first report was withdrawn by the Constituencies Boundaries Commission around the end of April 2013. By letter of 13th June, 2013, the Constituencies Boundaries Commission wrote to the First Claimant. The First Claimant received the letter on 14th June, 2013. The missive invited him to consult, it included proposals for consideration. Meetings were scheduled for consultations with interested persons. These meetings were fixed for 17th June, 2013 to 20th June, 2013. The Constituencies Boundaries Commission explains the haste as follows: Under Section 64 (2), the Constituencies Boundaries Commission has at most 5 years after the last report to submit its report to the speaker.

Section 64 (2) of the Constitution of Antigua and Barbuda reads:-

“A report by a Constituencies Boundaries Commission shall be submitted to the Speaker under this section not less than two or more than five years after the date when the last such report was submitted.”

- [3] The Claimants advance several complaints. They say the Constituencies Boundaries Commission abdicated its authority to conduct a review of all the constituencies and required data, and based its recommendations instead on some digital or mathematical exercise conducted by the Statistical Division. The Claimants also aver that the Constituencies Boundaries Commission violated Section 3 (1) of the Constituencies Boundaries Commission Guidance Act No. 10 of 2012.

Section 3 (1) is in these terms:-

“(1) In conducting its review the Commission shall be guided by the cardinal principles that all constituencies shall contain as nearly equal numbers of inhabitants, taking into account the need to achieve voter's parity, as appear to the Commission to be reasonably practicable, but the Commission may depart from the principles to the extent it considers expedient and necessary to take into account the following factors:-

- (a) The density of population and the changing demographics of the constituency;
- (b) The need to ensure the adequate representation of sparsely populated rural areas;
- (c) The geographical features of the constituency; and

(d) The boundaries of the various towns and villages and more particularly, residential area expansions.”

[4] Another grouse of the Claimants is the alleged failure of the Constituencies Boundaries Commission to consult properly as required by Section 3 (2) of Act 10 of 2012:-

“(2) during the process of review, the Commission shall where necessary hold consultation with interested persons and obtain credible data or information to assist it in its deliberation.”

The Claimants also complain that the appointment of party supporters, affiliates and activists to the Constituencies Boundaries Commission, gives rise to a real likelihood of bias in the carrying out of the Constituencies Boundaries Commission's constitutionally important functions.

[5] At the hearing, Mr. Astaphan SC submitted that the right to vote under the constitution is a settled one. That right is a right to vote in a properly demarcated constituency. He pointed out that Section 3 of the “Guidance” Act establishes a need to achieve voter parity as far as this is possible. Under Section 3, the Constituencies Boundaries Commission is required to consult with interested persons. As I understand Mr. Astaphan's argument, the affidavit of Mr. Crump, Chairman of the Constituencies Boundaries Commission, reveals that various scenarios were put before the Statistical Officers to arrive at the proposals that were eventually communicated to the First Claimant. Mr. Astaphan says the Constituencies Boundaries Commission; in order to achieve meaningful consultation ought to have let the Claimants know what those scenarios were. This excites the suspicion of Mr. Astaphan. He asks what these scenarios were and what did the public officers at the Statistics Division do with those proposed scenarios? He says that as a result, the Claimants are disadvantaged because they were not informed as to how the Constituencies Boundaries Commission arrived at the demarcation of the boundaries that were sent to the First Claimant for consideration.

[6] Mr. Mendes SC for the Constituencies Boundaries Commission gave a useful background. The first report by the Constituencies Boundaries Commission was withdrawn in April, 2013. Under Section 64 (2) of the constitution the Constituencies Boundaries Commission was bound to submit

a report to the speaker by 28th June, 2013. He says that against this background, the consultations carried out, while not ideal, were the best that could be done in the circumstances.

[7] During the arguments it appeared that the claimants conceded that the Commission was bound to place before them meaningful material to evaluate before inviting consultation. Indeed that was the gravamen of the complaint which vitiated the first report. The Claimants cannot now argue that by suggesting scenarios to the statistical officers to generate options out of which the Commission selected, one as the basis for its proposals amounts to abdication of the Commission's responsibilities. The claimants were correct to place little reliance on this complaint.

[8] As the hearing developed, it appeared to this court that the single issue that remained in contest was whether Section 64 (2) of the constitution is mandatory. If it is mandatory, the efforts by the Respondents to consult are admittedly the best that the limited time permitted. It must be borne in mind that the Claimants are not entirely new to this matter. They would long have been aware that the Constituencies Boundaries Commission was contemplating changes to the existing constituency boundaries and would have been able to put forward their own proposals, developed independently, for the Constituencies Boundaries Commission to consider.

[9] The Claimants cited the decision of the Privy Council in **Russell v Attorney General of St. Vincent and the Grenadines**, 1997 1 WLR 1134. Section 33 (3) (a) and Section 33 (4) of the Constitution of St Vincent and the Grenadines read as follows:-

"33 (a) Constituency Boundaries Commission shall be appointed in the following circumstances, that is to say: whenever a census of the population of St. Vincent has been held in pursuance of any law."

(4) Whenever the commission has been appointed in the circumstances specified in subsection (3) (a) or in the circumstances specified in subsection (3) (b) of this section it shall forthwith carry out a review of the boundaries of the constituencies into which St. Vincent is divided and may (and in the circumstances specified in subsection (3)(b) shall), by order, alter the boundaries in accordance with the provisions of this section to such extent as it thinks desirable in the light of those circumstances and the review."

[10] After a census had been held and a report published, no Constituencies Boundaries Commission was appointed. An election was held. The Claimants contended that the general election had been conducted in contravention to Section 33 of the constitution. The matter was considered by the Privy Council. Their Lordships concluded that Section 33, of the Constitution of St Vincent and the Grenadines was not 'mandatory' in the special sense that the appointment of a Constituencies Boundaries Commission was a condition precedent to a valid election.

[11] Counsel for the Claimants now argues that the failure to submit a report by 28th June, 2013 would not be fatal to the validity of the Constituencies Boundaries Commission report. There would then be no need for the hurried consultation. The Commission could ignore the June 28th 2013 deadline and hold extended consultation sessions.

[12] I note that the Privy Council in Russell's case was careful to confine their remarks to the effect of a failure to comply with Section 33 of the constitution on the validity of a subsequent election. I do not take that to mean that a constitutionally imposed obligation is to be lightly or cavalierly ignored.

[13] Lord Hailsham put it well in London and Clydesdale Estates Ltd v Aberdeen District Council 1980 1 WLR 182 at page 189-190:-

"When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events."

[14] In the present case, I conclude that the Constituencies Boundaries Commission was entirely justified in considering themselves bound to produce their report by the June 28, 2013 deadline. The Constitution remains the supreme law. Given this imperative, the consultations, admittedly less than ideal, were adequate in the circumstances.

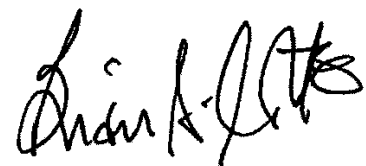
[15] The Claimants also complain that the Constituencies Boundaries Commission failed to consult before coming up with their proposals. Section 3 (2) of the Guidance Act requires the Constituencies Boundaries Commission to consult with interested persons. It is accepted that the

Claimants fall within this class of persons. But it is now settled law that in order to have proper consultations, those who are to be consulted must be afforded information as to what is to be considered. The Constituencies Boundaries Commission received the census data on 7th June, 2013. They then developed the proposals which they sent to the Claimants for their consideration one week later. The consultations were fixed for a 4 day period beginning on 17th June, 2013. I am satisfied that the Constituencies Boundaries Commission complied with Act 10 of 2012.

[16] The Claimants also submitted that the recommendations of the Constituencies Boundaries Commission are unreasonable or irrational. The role of this court is not to substitute its judgment for that of the Constituencies Boundaries Commission. It cannot be said that the conclusions at which the Constituencies Boundaries Commission arrived are so outside the pale that no reasonable body could reach them. I am satisfied that this description cannot be applied to the recommendations of the Constituencies Boundaries Commission.

[17] Although the Claimants also averred gerrymandering and bias on the part of the Constituencies Boundaries Commission no cogent evidence was led to support either allegation. The Constituencies Boundaries Commission says they had no regard to party support in deciding on the amended boundaries. In his affidavit, the First Claimant says the effect of the proposed recommendations is to dilute his areas of popular support and strengthen those of less political opponents. This was not demonstrated with the specificity an allegation of fraud would demand. It was not pursued with any vigor at the hearing. The Claimants were correct to adopt this approach.

[18] I therefore decline to grant the Claimants they seek. The claim is dismissed. I do not consider that the Claimants have acted unreasonably in bringing the present claim and so I make no order as to costs.



Brian Cottle
High Court Judge