

IN THE EASTERN CARIBBEAN SUPREME COURT  
GRENADA

AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE  
(CIVIL)

GDAHCV2019/0038

BETWEEN:

SANDIFORD RUEL EDWARDS

Claimant

and

THE INTEGRITY COMMISSION

Defendant

Appearances:

Mr. Anthony C.K. Hood, Mr. Gilbert Peterson SC and Mr. Gerald Thompson for  
the Claimant

Mr. Douglas Mendes SC and Mr. Ruggles Ferguson for the Defendant

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2019: June 14<sup>th</sup>  
June 28<sup>th</sup>

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JUDGMENT

[1] SMITH J: The central issue for determination is whether the Integrity Commission (the “**Commission**” or the “**defendant**”) established under the Integrity in Public Life Act,<sup>1</sup> could lawfully commence an investigation, on its own initiative, into the operations of the Marketing and National Importing Board<sup>2</sup> (the “**MNIB**”) and the conduct of the claimant, without a written complaint filed with the Commission.

[2] The claimant, on the one hand, contends that the Commission had no power to initiate an investigation into his conduct in the absence of a filed or lodged complaint and therefore acted *ultra vires* the Act. He seeks a number of declarations to that effect. The defendant, on the other hand, contends that

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<sup>1</sup> Act No. 24 of 2013

<sup>2</sup> The MNIB is a statutory body corporate established pursuant to the Marketing and National Importing Board Act No 40 of 1973.

the Commission lawfully commenced an investigation on its own initiative under the Act. The determination of this matter turns on the proper interpretation to be given to the relevant provisions of the Act.

- [3] The hearing of this claim was fixed for 5<sup>th</sup> June 2019. On that date, Mr. Hood, counsel for the claimant, applied for an adjournment on the ground he had not prepared written submissions. Mr. Ferguson, counsel for the defendant, did not oppose the application. Since the court's **calendar did not permit** an early, re-scheduled trial date, both counsel agreed to have the matter heard and determined on the written submissions in order to expedite the delivery of judgment. The court directed that the claimant file written submissions by 14<sup>th</sup> June 2019, the defendant file written submissions in response by 21<sup>st</sup> June 2019 and promised a written judgment by 28<sup>th</sup> June 2019. The Commission applied for and was granted an extension to file its reply submissions in response on 24<sup>th</sup> June 2019.

#### Background

- [4] It is undisputed that the investigation by the Commission was not triggered by any complaint made to the Commission but initiated by the Commission itself. The essential facts which led to the investigation are as follows: the claimant was the chairman of the MNIB from 2013 to March 2014 and, later, the chief executive officer of the MNIB from April 2014 to April 2018. Sometime in July 2018, certain media reports appeared in the Grenada press alleging impropriety on the part of the claimant. The provenance of these allegations appears to have been a statement made by Mr. Samuel Andrews, the former chairman of the MNIB.
- [5] An edition of the *New Today* newspaper, published on 30<sup>th</sup> July 2018, featured an article entitled "**Samuel Andrews Exposes Ruel Edwards**", in which Mr. Andrews was reported as making the following allegations: that the claimant withheld certain financial information regarding **MNIB's financial exposure** from the Board of Directors of the MNIB for almost two (2) years; that a foreign supplier was seeking redress for the payment of outstanding amounts for sugar supplies after several undertakings by the claimant were not honoured;

and that **the parlous state of MNIB's** affairs was revealed to the Board, upon the **chairman's** request, **which revealed the extent to which MNIB's true** financial status was concealed.

- [6] Prior to that newspaper article, the High Court of Grenada had, on the 28<sup>th</sup> June 2018, made an order for the garnishment of **MNIB's account in** satisfaction of a judgment debt in the sum of USD274,590.00 owed to CSME Commodity Traders Limited.
- [7] On 31<sup>st</sup> July 2018, the Government of Grenada issued a statement that an investigation would be conducted into the operations of the MNIB over the last five years and that the Cabinet of Grenada had endorsed a recommendation for a thorough investigation put forward by Prime Minister Dr. Keith Mitchell who was quoted as having a serious problem with the allegations concerning MNIB.
- [8] The Commission then initiated an investigation into the operations of the MNIB by writing to the Board of the MNIB on 9<sup>th</sup> August 2018, asking questions pertaining to the policies, procedures and practices at the MNIB. Representatives of the Commission also met with representatives of the MNIB, and the MNIB was formally advised that the Commission had commenced an investigation into its policies, procedures and practices.
- [9] On 13<sup>th</sup> September 2018, the Commission issued a press release announcing its investigation into the operations of the MNIB stating that: (1) an investigations **team comprised of the Commission's** technical staff, Head of Investigations, Head of Compliance and Legal Officer, was mobilised to commence the investigation; (2) representatives of the Commission advised the MNIB of the commencement of the investigation; (3) preliminary information was requested from the MNIB pursuant to section 12(1)(f) of the Act to inform the investigation; (4) the Commission had designated an Investigations and Complaints Panel of Commissioners to oversee the inquiry stage of the investigation; (5) the inquiry would be conducted in accordance with section 12(1)(e) and (f) of the Act and sections 3,4,5,7 and 8 of the

Prevention of Corruption Act (the “PCA”); and (6) upon completion of the investigation and inquiry, a report will be handed over to the Governor General, the Director of Public Prosecutions and the Minister with responsibility for the MNIB.

[10] The Commission conducted interviews in December 2018 with officials connected with the MNIB during the period under investigation. The claimant was, by letters to his attorney dated 19<sup>th</sup> February 2019 and 5<sup>th</sup> March 2019, respectively, invited to attend an interview scheduled for 18<sup>th</sup> March 2019 by the investigations team. A copy of the terms of reference was also provided to the claimant.

[11] On 1<sup>st</sup> **March 2019, the Commission wrote to the claimant’s attorney** advising that no formal inquiry had commenced with **respect to the MNIB’s operations** but that several persons involved with **MNIB’s operations** were being interviewed by an internal investigations team to facilitate the work of the formal inquiry, which would begin upon the completion of the preliminary investigation.

[12] From the above factual background, it is instructive to note the following:

(1) In its press release dated 3<sup>rd</sup> September 2018, the Commission stated that the inquiry shall be conducted in accordance with section 12(1)(e) and (f) of the Act.

(2) At paragraph 8 of its issued terms of reference, the Commission stated that the investigation was being conducted in accordance with section 12 (e) of the Act<sup>3</sup> and, at paragraph 9 of that terms of reference, the Commission stated that its inquiry was also to examine the practices and procedures of the MNIB in accordance with section 12 (f) of the Act<sup>4</sup>.

The Commission therefore appears to have initiated its investigation based on section 12 (1) (e) as well as section 12 (1) **(f) of the Act**. **The Court’s** task is to determine whether those sections permit the Commission to launch an investigation *ex proprio motu*.

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<sup>3</sup> I think it safe to conclude that the Commission meant to say in accordance with section 12(1)(e).

<sup>4</sup> I think it safe to conclude that the Commission meant to refer to section 12(1)(f).

## Issues

[13] In its written submissions, the Commission stated that it “agrees that the following issues arise for determination”:

- (1) Whether the defendant is empowered under the Act to conduct an informal investigation;
- (2) Whether the appointment of the investigative panel appointed by the defendant is in accordance with the provisions of the Act;
- (3) Whether the initiation and continuation of the inquiry into the MNIB and the claimant now in progress is lawful under the Act;
- (4) Whether the Commission is vested with the power to undertake enquiries on its own initiative under the Act in respect of suspected offences under the PCA;
- (5) Whether the absence of a complaint or complainant in this matter fatally impairs the conduct of the enquiry by the Commission; and
- (6) Whether there exists a distinction in the functions of the Commission contained in section 12(1)(d) and section 12(1)(e) of the Act so that the Commission may not invoke the latter function in order to circumvent the requirement in the former function for a complaint to be made in the prescribed manner before it may initiate an inquiry into suspected offences under the PCA.”

[14] It is unclear whether the parties had arrived at an agreed statement of facts and/or issues since none could be **found in the court’s file**. This is compounded by the fact that the claimant filed a separate statement of facts and issues on 13<sup>th</sup> June 2019 in which it identified two further issues, namely, whether there was a perception of bias on the part of the Commission and whether the Commission had acted independently or under the control of the Cabinet.

[15] The court makes the following observations in relation to the claimant’s statement of facts and issues. Firstly, it was filed after the hearing date of 5<sup>th</sup> June 2019 and without leave of the court. Secondly, and more importantly, the **issues of the Commission’s bias and lack** of independence were not pleaded. Thirdly, there is nothing in the claimant’s three affidavits to suggest an intention to challenge the Commission’s investigation on either of these grounds. The issues of bias and lack of independence appear to be an afterthought. To permit the claimant to advance arguments now on these issues for which there is no basis in his pleadings and when the Commission

would have had no opportunity to rebut these fresh assertions with affidavit evidence would be improper and wholly unfair to the Commission.

[16] Returning now to the six issues identified at paragraph 12 above, I think that the fourth, fifth and six issues can be subsumed under the third issue, while the first and second issues can conveniently be dealt with together. Accordingly, the following two issues are the issues that will therefore be determined by court:

- (1) Whether the initiation and continuation of the inquiry into the MNIB and the Claimant now in progress – in the absence of a written complaint – is lawful under the Act;
- (2) Whether the defendant is empowered under the Act to conduct an informal investigation or appoint an investigative panel.

[17] Since the resolution of these issues depends entirely on statutory interpretation, a useful starting point is to set out the relevant provisions of the Act.

#### Relevant Provisions of the Act

[18] The long title of the Act is as follows:

**“An ACT to establish an Integrity Commission in order to ensure integrity in public life, to obtain declaration of the assets, liabilities, income and interest in relation to property of persons in public life, to give effect to the provisions of the Inter-American Convention Against Corruption, and for matters incidental thereto, and for purposes connected therewith.”**

[19] From the long title, it will be observed that the objectives of the Act are at least threefold: firstly, to ensure integrity in public life; secondly, to obtain declarations of assets and liabilities from persons in public life; and, thirdly, to give effect to the Inter-American Convention Against Corruption.

[20] Section 2 of the Act defines **“public body” as including: “a corporation established by an Act of Parliament for the purpose of providing a public function and any subsidiary company thereof registered pursuant to the**

provisions of the Companies **Act, Chapter 58A**". It is not in dispute that both the MNIB and the claimant fall within the purview of the Commission.

[21] Section 12 sets out the functions of the Commission. This is the section upon which much of the argument is concentrated.

**"12. (1) The Commission shall –**

- (a) carry out those functions and exercise the powers pursuant to the provisions of this Act;
- (b) receive and examine all declarations filed pursuant to the provisions of the Act;
- (c) make such inquiries as it considers necessary in order to verify or determine the accuracy of a declaration filed pursuant to the provisions of this Act;
- (d) receive and investigate complaints regarding any alleged breaches of the provisions of this Act or the commission of any suspected offence under the provisions of the Prevention of Corruption Act, Chapter 252A;
- (e) investigate the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption;
- (f) examine the practices and procedures of public bodies;
- (g) instruct, advise and assist the heads of public bodies with respect to changes in practices or procedures which may be necessary to reduce the occurrence of corrupt practices;
- (h) carry out programmes of public education intended to foster an understanding of the standard of integrity;
- (i) perform such other functions and exercise such powers as are required pursuant to the provisions of this Act.

(2) In the exercise of its functions under this Act, the Commission-

- ....
- (c) shall have the power to authorise investigations, summon witnesses, require the production of any reports, documents or other relevant information, and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions pursuant to the provisions of this Act."  
(underlining mine)

[22] Section 13 confers on the Commission the same powers, rights and privileges as a commission of inquiry appointed pursuant to the Commissions of Inquiry Act.<sup>5</sup> Part III of the Act deals with financial disclosure and the requirement of persons in public life to file declarations. In particular, section

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<sup>5</sup> Laws of Grenada, Chapter 58.

35 empowers the Commission to recommend to the Governor General the appointment of an investigatory tribunal to inquiry into the accuracy or fullness of a declaration, where the Commission considers it necessary or expedient to do so.

[23] Part IV of the Act deals specifically with the complaints and the investigation mechanism as it relates to breaches of the Code of Conduct in the Sixth Schedule of the Act. Section 40 provides that: **“A person in public life shall observe the Code of Conduct as specified in the Sixth Schedule.”**

[24] Section 41 of the Act provides for the making of formal complaints where there are reasonable grounds to believe that a person in public life has breached a provision of the Code of Conduct:

**“41. (1)** A person who has reasonable grounds to believe that a person in public life is in breach of any provision of the Code of Conduct may make a complaint in writing to the Commission and shall state in the complaint the particulars of the breach including—

(a) the period within which the breach was committed; and  
(b) the names and addresses of person involved in the commission of the breach.

(2) A person making a complaint pursuant to subsection (1) shall produce to the Commission—

(a) evidence to support the complaint including documentary evidence and sworn statements; and  
(b) such other particulars as may be prescribed.

(3) A person making a complaint pursuant to subsection (1) shall not be liable in civil or criminal proceedings unless it is proved that the **complaint was not made in good faith.”**

[25] Section 43 of the Act empowers the Commissions to investigate where it deems it necessary to so do, upon the examination of the complaint:

**“43.—(1)** Where upon an examination of a complaint made pursuant to section 42, the Commission is of the view that an investigation is necessary, it shall inquire into the matter.

(2) The sittings of the Commission to take evidence or hear submissions in the course of an inquiry pursuant to subsection (1) shall be held in camera.

(3) A person who makes a complaint and the person in public life against whom the complaint is made and the inquiry is being held,



shall be entitled to notice of the proceedings of the inquiry and to be represented at the inquiry either personally or by an attorney-at-law.”

Can Commission investigate without complaint?

[26] The claimant's case can be distilled to these five submissions which I shall consider in greater detail below:

- (1) An “**examination**” is distinguishable from an “**investigation**”. While section 12(1) (f) empowers the Commission to examine the practices and procedures of the MNIB, it does not empower the Commission to initiate an investigation under section 12 (1) (e) without a complaint. The Commission cannot rely on section 12(1) (f) since the examination of the practices and procedures of public bodies is not *ipso facto* synonymous with an investigation of the conduct of persons in public life.
- (2) The Commission cannot rely on section 12 (1) (e) because section 12(1) (d) already authorises it to receive and investigate complaints regarding any alleged breaches of the Act or the commission of any offences under the PCA. The Commission is attempting to do on its own initiative, under section 12(1) (e), exactly what section 12 (1) (d) expressly states must be done on the basis of a complaint to the Commission.
- (3) Section 13 of the Act addresses the legal parameters for the conduct of an investigation but does not confer any power on the Commission to carry out an investigation on its own initiative.
- (4) Other than sections 35(1) and 43(1), there are no other provisions of the Act which expressly or impliedly authorises the Commission to undertake any investigation.
- (5) The Act, unlike section 33 of the Integrity in Public Life Act of Trinidad and Tobago<sup>6</sup> which **specifically provides for that country's integrity** commission to initiate inquires on its own initiative, makes no such provision. It is reasonable to presume that the Grenada parliament had knowledge of the precedent of section 33 of the Trinidad and Tobago Act and decided, as a matter of policy, not to vest the Grenada Commission with the equivalent power.

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<sup>6</sup> Chapter 22:01, Laws of Trinidad and Tobago.

*“Examination” vs “Investigation”*

[27] The claimant refers to several sections of the Act, namely, 34(2), 34(6), 38(9) (b) and 38(9) (c) to demonstrate that, in those sections, when the words **“examine” and “examination” are used**, they are not synonymous with an **“investigation”**. To illustrate the point, I set out the following sections of the Act:

“34 (2) The Commission may upon the examination of a declaration furnished to it, request from the person in public life, any information or explanation relevant to a declaration which in the opinion of the Commission, would assist in its examination;

....

34(6) Where upon an examination made pursuant to subsection (1), the Commission is satisfied that a declaration has been fully made, it shall forward to the person in public life, a Certificate of Compliance provided for in the Fourth Schedule”;

...

38 (9) If an investigation direction has been issued pursuant to the provisions of subsection (4), the Commission may, for the **purpose of inquiring into the matter ...**

(b) question that person in public life or other person under oath or affirmation administered by the Commission, and examine and retain for further re-examination or for safe custody, such property, book, document or other object.”

[28] I would agree that **“examination”**, in the context in which it is used in those sections of the Act set out above, is not synonymous or coterminous with an inquiry or investigation. It is more akin to an inspection or scrutinization. The context in which **the word “examination” appears in** sections 34(2) and 34(6) of the Act is that of financial disclosure. In that part of the Act, persons in public life are required to furnish the Commission with declarations relating to financial disclosure. In such a context, **the references to “examination”** means that the Commission is empowered to inspect or scrutinize the declarations submitted by persons in public life. The same analysis would apply where the word examination is used in section 38(9)(b) and 38(9)(c) (ii) & (iv) of the Act.

[29] The Commission referred the Court to the following passage Sullivan and Driedger on the Construction of Statutes<sup>7</sup> which is a useful reminder about the importance of context in interpreting written instruments:

**“Meaning depends** on context. In an earlier edition, Driedger pointed out that words in isolation are virtually meaningless. The meaning of a word depends on the context in which it is used. This basic principle of communication applies to all texts, including legislation. It has been repeatedly confirmed by linguists, linguistic philosophers, cognitive psychologists and others – by virtually anyone who studies communication through language. And it has long been recognized in law. As Viscount Simonds wrote in *A.G. v. Prince Ernest Augustus of Hanover*:

**...words, and particularly general words, cannot be read in isolation: their colour and context are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use “context” in its widest sense...**”

In *Prasad v. Canada (Minister of Employment & Immigration)*, Sopinka J. wrote:

In order to arrive at the correct interpretation of statutory provisions that are susceptible of different meanings, they must be examined in the setting in which they appear.

In *Poulin v. Serge Morency et Associes Inc.*, Gonthier J. wrote:

**As Cote notes...** “the meaning of words depends in part on the context in which they are used. The overall context of an enactment includes, *inter alia*, the other provisions of the statute, the related statute and the other rules of the legal system.”

[30] The Commission contends that, in the context of section 12(1)(f) of the Act, the word **“examine”** contemplates inquiries. In support of that submission, the Commission refers to Chambers Concise Dictionary which defines the word “examine” as follows:

**“to test; to inquire into; to question; to look closely at** or into, to inspect. – *n* **examinabil’ity**. *adj* **exam’inable**. – *n* **examina’tion**

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<sup>7</sup> Fourth Edition at pp 259-260

careful search or inquiry; close inspection; a test of capacity and knowledge (*colloq* contraction **exam'**)..."

[31] It **defines the word "investigate" as follows:**

**"to** search or inquire into with care and accuracy. – *vi* to make investigation. – *adj* **inves'tigable** able to be investigated. – *n* **investiga'tion** the act of examining; research.."

[32] There is **prevailing force in the Commission's** argument that while section 12(1)(e) and (f) are not equivalent, there is some overlap and the major difference is with respect to the subject matter of the inquiry. An inquiry under section 12(1)(e), is directed **at "conduct" while the inquiry to be** undertaken under section 12(1)(f) is with respect to practices and procedures. But the practices and procedures of an institution do not come into being spontaneously; they are not self-generating; they are created by a human actor. An inquiry into the practices and procedures of the MNIB might therefore inevitably involve an inquiry into practices instituted or followed by the claimant. In any event, as already observed at paragraph 11 of this judgment, the Commission is inquiring into the practice and procedure of the MNIB under section 12(1) (f), as well as inquiring into the conduct of the claimant under section 12(1) (e). I conclude on this point that the Commission could lawfully launch an examination (which in that context involves an inquiry) into the procedures and practices of the MNIB under section 12(1)(f) of the Act.

*Section 12 (1) (e)*

[33] **I agree with counsel for the Commission that the Commission's powers under** section 12(1) (e) and (f) are unlimited and not statutorily tethered to any prior requirement that there be a complaint made to it by a third party before it may embark upon such investigations or examinations. There are, quite plainly, no words used in section 12(1)(e) and (f) which indicate any such limitation.

[34] Counsel for the Commission contends that parliament would have created a weak instrument for tackling corruption if the Commission could become aware of allegations of corruption against public officials within its purview, but was

required to stand idly by and initiate no action until someone deems it fit to make a complaint. I agree. If **the claimant's contention is correct**, parliament would have enacted provisions wholly inadequate to meet the ambitious and high ideals of propriety aimed for in the preamble. If that were intended, clear words to that effect would have been used. Section 12 would have provided, for example, that the Commission may investigate dishonest and corrupt acts only where a complaint is made to it.

[35] As regards the role of a preamble in the construction of statutes, the Interpretation and General Provisions Act,<sup>8</sup> (**"the Interpretation Act"**) provides as follows:

**"11. Construction of Preambles**

The Preamble, if any, of an Act may be referred to for assistance in explaining the scope or **object of that Act.**"

**"39. Construction of enabling words**

**"Where a written law confers power upon a person to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are necessary to enable that person to do or to enforce the doing of that act or thing."**

[36] When consideration is given to section 39 of the Interpretation Act, it seems to **me that to read a limitation upon the Commission's power to initiate an investigation** into the conduct of the claimant under section 12(1) (e) of the Act would lead to precisely what section 39 of the Interpretation Act seeks to avoid: a functionary being vested with broad powers to do certain things and being unable to do them because of some absence of specificity in the Act.

[37] I think, however, that section 12(1)(e) is sufficient on its own to authorise the Commission to initiate an investigation **into the claimant's conduct**. The only two prerequisites seem to be that, firstly, the person falls within the purview of the Commission; and, secondly, that in the (genuine) opinion of the Commission the conduct is dishonest or conducive to corruption. In this case, it is not in dispute that the claimant falls within the purview of the Commission. There has been no suggestion in the pleadings that the Commission did not

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<sup>8</sup> Act No. 30 of 1989.

**form an opinion that the claimant's conduct may** be considered dishonest or conducive to corruption.

[38] Counsel for the Commission further contends that section 12(1)(d) cannot be construed as imposing an implied constraint on the Commission's powers under section 12(1)(e) and (f). Section 12(1)(d), they contend, empowers the Commission to "receive and investigate complaints regarding any alleged breaches of the provisions of this Act or the commission of any suspected offence under the provisions of the Prevention of Corruption Act..." It does not say that its powers of investigation of breaches of the Act or the PCA are limited to occasions where it receives such complaints. It empowers it only to receive complaints, and having received them, to investigate them. It does not limit its powers of superintendence over public officials falling within the purview of the Act only to instances where a person is moved to make a complaint. I think that this is the proper interpretation to be given to those sections.

[39] It does indeed appear that section 12(1)(e) and (f) applies to a wider range of conduct, namely, dishonest or corrupt conduct, than the conduct which can be the subject of a complaint under section 12(1)(d) namely, breaches of the Act and the PCA. **I accept counsel for the Commission's submission that the better way to view section 12 is to treat subsection (1)(e) as constituting the full panoply of the Commission's power to investigate dishonest and corrupt conduct, and subsection (1)(d) as limiting the circumstances under which members of the public may activate the Commission's investigative powers to breaches of the Act and the PCA.** Interpreting it in this way better accords with the overall purposes of the Act of providing a mechanism to ensure integrity in public life.

[40] Provisions similar to section 12 (1)(d) and (e) of the Act were interpreted in the 2009 Ghanaian case of Republic v. Fast Track High Court, Accra, ex parte Commission on Human Rights and Administrative Justice,<sup>9</sup> the

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<sup>9</sup> [2009] 1 LRC 44.

Commission on Human Rights and Administrative Justice (the “CHRAJ”) initiated an investigation invoking article 218(a) of the Ghanaian Constitution (the equivalent of section 12(1)(d) of the Grenadian Act), without a formal complaint from an identifiable complainant and on its own initiative. Article 218 of the Constitution, which is set out at page 72 of the judgment, states as follows:

“The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty—

- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption and abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation those services;
- (c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution;
- (d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a),(b), (c), of this clause through such means as are fair, proper and effective, including—(i) negotiation and compromise between the parties concerned; (ii) causing the complaint and its findings to be reported to the superior of an offending person; (iii) bringing proceedings in a competent Court for a remedy to secure the termination of the offending action or conduct , or the abandonment or alteration of the offending procedures; and (iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;
- (e) to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;

- (f) to educate the public as to human rights and freedoms by such means as the Commissioner may decide including publications, lectures and symposia; and (g) to report annually to Parliament on **the performance of the functions.**" (Underlining mine)

[41] Wood CJ of the Supreme Court of Ghana, at page 59 of the judgment, interpreted section 218 (a) in this way:

**"For a complaint within** the meaning of art 218(a) of the 1992 Constitution to form the basis for investigation by the Commission on Human Rights and Administrative Justice it must be made by an identifiable individual or corporate body and lodged with the Commission or are complaints made through the media and other public fora regarding violations and freedoms, injustice, corruption, abuse of power and unfair treatment of any person in the exercise of his official duties an adequate basis for the institution of investigation **by CHRAJ."**

[42] The learned chief justice held that article 218(a) required a formal complaint by an identifiable complainant (at page 73, letters (e) to (i)), but he made clear that under article 218(e) (the equivalent of the Grenadian section 12(1)(e)), the CHRAJ was empowered to launch an investigation without any complaint at all:

"I proceed in my analysis of art 218(a) on the principle also that the words as used were carefully debated and chosen by the framers of the Constitution with a view to it forming a logical, consistent and harmonious whole, not a disjointed, incoherent or inconsistent piece. Under arts (a)–(c), the Commission is to investigate complaints simpliciter against those persons named therein and of, and concerning, those matters under reference. Interestingly, in the case of art 218(c), the reference is not simply to complaints qua complaints **(compare (a) and (b)), but 'complaints of allegations of fundamental rights and freedoms' under the Constitution. This, in my respectful view, reinforces the point that a formal complaint is a prerequisite where the word 'complaint' is used. If the framers had intended that broad, liberal meaning of complaint, which includes media and public fora allegations, they would have treated art 218(c) in the same vein as art 218(e) and completely done away with the word 'complaint'. However, under art 218(e), though they have been vested with investigative powers, no reference is made to specific complaints at all, but merely to 'alleged or suspected acts of corruption and misappropriation of public funds by officials'.** I do see a world of difference between the two types of investigations, namely, investigations into known specific complaints of the specified matters under art 218(a)–(c) and allegations or suspected cases of corruption and misappropriation of public funds under art 218(e). In (a), (b), and (c) the reference is to direct substantive complaints, whereas art



218(e) clearly envisages situations where the Commission is faced with no definite formal complaint, but has come by series of allegations or suspected cases of corruption and the misappropriation of public funds by officials.” (Underlining mine)

[43] Wood CJ further stated (at page 74, letters (a) to (d)):

**“It is by design, certainly not by accident, that although art 218(a)** makes specific reference to violations of fundamental human rights and freedoms, as well as corruption, yet, separate and specific provisions covering the same matters violations of fundamental rights and freedoms and corruption, to the total exclusion of the other subject-matters, are again separately catered for under arts 218(c) and 218(e), respectively. As already noted, the very wording of art 218(c) shows formal complaints are required to trigger the investigative process. The choice words are ‘complaints of allegations’, implying that the complaints are made up of allegations. I think if the intention was to have complaints mean both formal and informal, and we should remember that these are to be constituted by allegations made in the public domain, not made to the Commission, but outside of it, the framers need not have added the word ‘allegations’, **for we would be contending with a tautology.** Crucially, however, under art 218(e), formal complaints are not needed to trigger the Commission into action. Indeed, under it, all that is required to set the Commission on Human Rights and Administrative Justice’s investigative machinery into gear is to make allegations or raise suspicion over certain specified matters. From its clear wording, the only limitation is that those matters must relate to corruption or the misappropriation of public moneys by officials. It does not cover abuse of office or human rights violations by officials, or other persons, natural or legal. This, I believe is the place for media and public fora allegations.” (Underlining supplied)

[44] I find the reasoning of Wood CJ to be logical and convincing. It is curious that counsel for the claimant has made attempt to distinguish Republic v Fast Track High Court, Accra, ex parte Commission on Human Rights and Asministrative Justice or even refer to it. I conclude that the media reports concerning the claimant were sufficient – in the words of Wood CJ – to set the **Commission’s investigative machinery into gear, once the Commission was** satisfied that the conduct may be considered dishonest or conducive to corruption.

*The Effect Sections 13, 35(1) and 43(1)*

[45] Having concluded that section 12(1)(e) and (f) authorises the Commission to inquire into the conduct of the claimant and into the practice and procedure of the MNIB, it follows that I am unable to accept that Part III section 35(1) and Part IV section 43(1), are the only provisions of the Act which expressly or impliedly authorise the Commission to undertake any investigation. The effect of those sections is to control and regulate the broad powers bestowed upon the Commission under section 12(2) in respect of the specific matters provided for in those parts, such that complaints made to the Commission must be dealt with in accordance with Part IV and investigations into financial disclosures made in declarations are to be conducted in accordance with Part III. I agree with counsel for the Commission that the effect of Parts III and IV is not to take away the power to investigate dishonest and corrupt conduct and to examine the practices and procedures which section 12(1)(e) and (f) vest in the Commission and that to hold otherwise would be to wholly emasculate the Commission.

[46] In relation to section 13 of the Act, I would agree with counsel for the claimant that it addresses the scope of the Commission powers of investigation – provided that its jurisdiction has been properly invoked or triggered. But since I have concluded that its jurisdiction has been properly invoked, the full plenitude of powers of a commission of inquiry is available to the Commission.

*The Trinidad and Tobago Act*

[47] This point can be disposed of shortly. There is nothing before me upon which I can make any presumption that the Grenada parliament had knowledge of section 33 of the Trinidad and Tobago Act and decided, as a matter of policy, not to vest the Grenada Commission with the equivalent power, as was used by the claimant. There are a number of similar legislation throughout the Commonwealth and it would be wrong for this court to make any assumptions as to which of them the Grenada Act might have been modelled upon. I have found that on a plain, natural and ordinary reading of section 12(1)(e) and (f), it confers on the Commission the power to initiate an investigation on its own initiative. I have not found it a helpful exercise to consider how the

draftsperson in Trinidad and Tobago set about achieving a similar objective in their legislation.

Whether Commission can conduct informal investigation or appoint an investigative panel?

[48] Section 12(2)(c) of the Act gives the Commission wide powers of inquiry in exercising its functions. It provides that the Commission:

“(c) shall have the power to authorise investigations, summon witnesses, require the production of any reports, documents or other relevant information, and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions pursuant to the provisions of this Act.” (underlining mine)

[49] Further, as already set out at paragraphs 34 and 35 of this judgment, section 39 of the Interpretation Act confers on the Commission “all such powers ... as are necessary to enable that person to do or to enforce the doing of that act or thing.”

[50] There is no statutory restriction or qualification imposed on the mode of the investigation which the Commission is empowered to carry out under section 12(1)(e) and (f). On the contrary, section 12(2)(c) gives the Commission the wide power to **“do all such things as it considers necessary or expedient for the purpose of carrying out its functions pursuant to the provisions of this Act”**. Simply put, the Commission is empowered “to do all such things as it considers necessary or expedient for the purpose of carrying out” its investigative powers under section 12(1)(e) and (f).

Disposition

[51] Having regard to the clear aims of the Act; the plain and ordinary meaning of section 12(1)(e) and (f) as analyzed above; the ambit of the power conferred under section 12(2)(c); the guidance to be found at section 39 of the Interpretation Act; the fact that the Commission has established a terms of reference for the formal inquiry which is yet to commence; and the fact that there has been preliminary investigations and interviews conducted by the **Commission’s investigative team** with a view to informing any potential formal

inquiry and that persons of interest, including the claimant, were invited to to such interviews, I am satisfied that there is no proper basis to grant any of the reliefs sought by the claimant in this claim.

[52] I therefore make the following orders:

- (1) The **Claimant's claim is dismissed.**
- (2) No order as to costs.

Justice Godfrey Smith SC  
High Court Judge

By the Court

Registrar