



[2016] JMSC Civ 101

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2011 HCV 07390

**In the matter of an Application by
Keisha Bent for an Administrative
Order for Judicial Review**

**Regina v The Commissioner of
Police, ex parte Keisha Bent**

BETWEEN	KEISHA BENT	CLAIMANT
AND	THE COMMISSIONER OF POLICE	DEFENDANT

Ms. Althea Grant for the Claimant.

Ms. Celia Middleton instructed by the Director of State Proceedings, for the Defendant.

Heard 13th and 14th, and 17th June, 2016.

Coram: Dunbar-Green, J.

**Judicial Review – Dismissal of Applicant – Breach of Natural Justice – Whether
Decision Disproportionate – The Police Service Regulations, 1961 – Order of
Certiorari Sought**

[1] The applicant was enlisted in the Jamaica Constabulary Force (JCF) on 24th June 2002 and by letter dated 1st October 2010, she was ordered dismissed. This was consequent on an investigation into her conduct as a police officer and a Court of Enquiry having found that charges against her had been proved. The sequence of actions by the Commissioner of Police (the Commissioner) leading

up to her dismissal followed a complaint made against the applicant by then Resident Magistrate for the parish of St. Elizabeth, His Hon. Mr. Stanley Clarke.

[2] By Amended Fixed Date Claim Form filed 1st July 2014, the applicant seeks judicial review of the decision of the Commissioner to dismiss her from the JCF. The application is supported by the affidavits of Keisha Bent filed 6th January 2012 and 24th March 2015.

[3] The applicant seeks the following orders:

- (i) a declaration that the decision of the Commissioner to dismiss the applicant is disproportionate in all the circumstances and is consequently void;
- (ii) an order of Certiorari to quash the decision of the Commissioner terminating the employment of the applicant;
- (iii) damages;
- (iv) costs; and
- (v) such further and other relief as the Court deems just.

[4] The grounds on which the relief is sought are as follows:

- (i) the decision to remove the applicant from the post of Woman Constable was arbitrary, oppressive, unlawful and unreasonable;
- (ii) the decision to remove the applicant was disproportionate in light of the offence;
- (iii) the respondent failed to take into account relevant matters in arriving at his decision;
- (iv) the respondent considered irrelevant material which weighed heavily on him arriving at the decision to dismiss the applicant;

- (v) the respondent acted in breach of natural justice principles;
- (vi) the applicant suffered serious hardship as a result of the dismissal; and
- (vii) the applicant is substantially prejudiced.

[5] The Commissioner contends that he acted reasonably and in compliance with the rules of natural justice and the **Police Service Regulations of 1961** (the Regulations). In support of his assertion, he relies on the affidavit of Owen Ellington filed 10th July 2013.

Regulations 47-59 of the Police Service Regulations 1961

[6] These regulations, so far as they are relevant, provide:

47.- (1) *Subject to the provisions of these Regulations a member may be dismissed only in accordance with the procedure prescribed by this regulation.*

(2) *The following procedure shall apply to an investigation with a view to the dismissal of a member –*

(a) *the Commission or, in relation to a member below the rank of Inspector, the Commissioner (after consultation with the Attorney-General if necessary) shall cause the member concerned to be notified in writing of the charges and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;*

...

(c) *If a member below the rank of Inspector does not duly furnish such a statement as aforesaid or if he fails to exculpate*

himself the Commissioner shall appoint a court of enquiry (constituted as under sub-paragraph (b) to enquire into the matter;

(d) the court shall inform the member charged that on a day specified the court will enquire into the charges and that he will be permitted to appear before the court and defend himself;

(e) if witnesses are examined by the court the member shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto;

(f) the court may in its discretion permit the member charged or the person or authority preferring the charges to be represented by another member or by a member of the public service or by a solicitor or counsel and may at any time, subject to such adjournment as in the circumstances may be necessary, withdraw such permission: so, however, that where the court permits the person or authority preferring the charges to be represented the member charged shall be given the like permission;

(g) if during the course of the enquiry further grounds of dismissal are disclosed, and the Commission thinks fit to proceed against the member upon such grounds, the Commission shall cause the member to be furnished with the written charge and the same steps shall be taken as those prescribed by this regulation in respect of the original charge;

(h) if having heard the evidence in support of the charges the court is of the opinion that the evidence is insufficient it may report accordingly to the Commission without calling upon the member for his defence;

(i) *the court shall furnish to the Commission a report of its findings (which may include a report on any relevant matters) together with a copy of the evidence and all material documents relating to the case: if the Commission is of opinion that the report should be amplified in any respect or that further enquiry is desirable, it may refer any matter back to the Court for further enquiry or report accordingly;*

(j) *if the Commission is of opinion that the member should be dismissed the Commission shall recommend to the Governor-General that an order be made accordingly;*

(k) *if the Commission is of opinion that the member deserves some punishment other than dismissal, it shall recommend to the Governor-General what other penalty should be imposed;*

(l) *if the Commission is of opinion that the member does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose other grounds for removing him from the Force in the public interest, it may recommend to the Governor-General that an order be made accordingly, without recourse to the procedure prescribed by regulation 26.*

(3) *In relation to a member below the rank of Inspector references to the Commission in sub-paragraphs (g), (h) and (i) of paragraph (2) shall be construed as references to the Commissioner; and in relation to such an officer references in sub-paragraphs (j), (k) and (l) of that paragraph to recommendations which may or are to be made by the Commission to the Governor-General shall be construed as references to decisions which may or are to be made by the Commissioner.*

48. (1) *An order for the holding of a court to investigate a charge against a member of or above the rank of Inspector shall be signed by the Governor-General.*

(2) *The order of the Governor-General or Commissioner appointing such a court shall be forwarded to the person named therein as president and a copy thereof shall be sent to the Officer in charge of the division or branch in which the member charged is stationed. The president shall then notify the members of the court named in the order of the time and place for the holding of the court and the Officer in charge of the division or branch shall so notify the authority preferring the charges and the member charged and furnish to each a copy of the charge, and the names of the president and members of the court, so as to enable the parties concerned to apply to the president for summonses for such witnesses as they may require.*

49. *When the court is assembled, the president shall read the charge or charges, and shall call upon the member charged to say whether he admits or denies them or any of them: the admission of any such charge shall be recorded in writing by or at the direction of the president and shall be signed by the member charged, and thereupon it shall not be necessary to hear evidence except as to the gravity of the offence or as to character, unless the court is of the opinion that the evidence ought to be heard.*

50. (1) *Each witness shall be examined upon oath and his evidence shall be recorded in writing.*

(2) *The evidence so recorded shall be read over to and signed by the witness and by the president.*

(3) *The evidence shall be recorded on one side only of sheets of paper of regulation foolscap size. The pages shall be numbered*

consecutively for the purpose of reference. The evidence for the defence shall be marked at the top of each page "Defence."

51. A person appearing on behalf of the member charged may be permitted to address the court and to assist the member charged in examining or cross-examining the witnesses; witnesses for the defence may also be examined by the member charged, and cross-examined by the complainant.

52. (1) After the close of the evidence in support of the charges the member charged shall proceed with his defence and if he wishes to give evidence he shall do so on oath, and before calling his witnesses.

(2) The record of his evidence shall be read over to and signed by the member charged.

(3) If the member charged does not wish to give evidence on oath, but wishes to make a statement, he shall do so before the examines his witnesses; his statement shall be in writing or recorded in writing and shall be signed by him and shall be kept with the record of evidence of the witnesses.

(4) The member charged shall be given every facility as regards the obtaining of evidence of character from any Officer under whom he has served.

53. The person or authority preferring the charges may, after the close of the defence, by permission of the court produce evidence to rebut any statement which may have been made by the member charged or his witnesses; but such evidence shall be confined strictly to that object.

54. The court may in its discretion adjourn its proceedings from time to time and place to place.

55. *The president shall clear the court on any discussion and where any intemperate words are used by any member the court shall cause them to be recorded in writing and reported to the Commissioner. It shall be the duty of the president to ensure that no unbecoming words are addressed to the member charged or to any witness and that every person attending the court is treated with proper respect and civility.*

56. *The president shall decide upon the admissibility of any evidence tendered, and as to the propriety of any question asked.*

57. (1) *When all the evidence has been taken the president shall clear the court; he shall then record in writing the findings of the court as to whether the charges have or have not been proved and that record shall be signed by the members of the court whom concur in the findings....*

[7] Decision of the Commissioner

The decision that is being impugned is that of the Commissioner as stated in letter of 8th October 2010. The letter, in part, reads:

... “You have been ordered dismissed from the Jamaica Constabulary Force by the Commissioner of Police, consistent with the provisions of Regulation 47 of the Police Service Regulations 1961. This dismissal will take effect on the date you are served with this notice....”

[8] Paragraph 14 of the affidavit of Owen Ellington sets out the factors considered by the Commissioner in arriving at his decision. He depones:

“I considered the President’s Report, the Notes of Evidence of the Court of Enquiry, the nature of the offence committed by Woman Constable Bent and the importance of integrity and honesty by a member of the Jamaica Constabulary Force. I

concluded, in all the circumstances, that the penalty of dismissal was appropriate.”

[9] His affidavit also sets out, in detail, the sequence of events leading up to the dismissal, as summarised below.

i) By letter dated 13th August 2008, Mr. Stanley Clarke, Resident Magistrate for the parish of St. Elizabeth made a report of wrong-doing on the part of the claimant. The material aspects of this letter are:

(i) ... please be advised that on July 9, 2008, the captioned matters came before me... There, the investing officer, Constable Keisha Bent Campbell was present.

The Summonses were duly endorsed as having being served personally by the said Constable Bent-Campbell on both Althea Drummond and Dean Witter.

Due to the absence of Dean Witter, I ordered a warrant for his arrest.

I am advised that after the adjournment, the case file for Althea Drummond was missing. However, on July 16, 2000, Constable Bent-Campbell told staff that in fact she did not serve the Summons on Dean Witter and was concerned about the warrant that was to be issued for his arrest.

I met with the constable, Mr. Carl Miller, attorney-at-law and Clerk of Court concerning this outrageous allegation after being advised by the Clerk of Court of this.

The constable admitted in our presence that she did not serve the Summons on the accused man. She asked for mercy. I indicated

to her the seriousness of her actions as an officer of the court and that I would be remiss in not reporting the same to her superiors...”

- (ii) The allegations were investigated by Detective Inspector Paul Bernard, Acting DSP for Crime in the parish of St. Elizabeth, and a report prepared which was sent to the Director of Public Prosecutions (DPP) for a ruling.
- (iii) The DPP ruled that departmental action was to be taken against the applicant.
- (iv) The Commissioner decided that disciplinary charges should be preferred against the applicant.
- (v) Notice of approved charges was served on the applicant. The charges are set out hereunder:

Charge 1. Being a member of the Jamaica Constabulary Force, conducted yourself contrary to the discipline, good order and guidance of the Force in that you misled the Black River Resident Magistrates Court presided over by His Honour Mr. Stanley Clarke by stating a deliberate lie that you served summons on Mr. Dean Witter charging him for Assault Occasioning Bodily Harm and caused a Bench Warrant to be issued for his arrest on Wednesday the 9th of July, 2008 in Black River Resident Magistrates Court, St. Elizabeth.

Charge 2. Being a member of the Jamaica Constabulary Force, conducted yourself contrary to the discipline, good order and guidance of the Force in that you brought the office of the Constable in disrepute when you admitted to His Honour Mr. Stanley Clarke, Resident

Magistrate for St. Elizabeth that you stated a deliberate lie, and caused the court to issue a Bench Warrant for Mr. Dean Witter who was never served a summons to attend court as stated by you on Wednesday the 9/7/08 at Black River Resident Magistrates Court, St. Elizabeth.

Charge 3. Being a member of the Jamaica Constabulary Force, conducted yourself contrary to the discipline, good order and guidance of the Force in that you were derelict in your duties when you failed to properly investigate and prepare summons in case Regina versus Dean Witter for Assault Occasioning Bodily Harm resulting in wrongful issue of a Bench Warrant for the said Dean Witter on Wednesday the 9/7/08 at Black River Resident Magistrates Court, St. Elizabeth.

NB. These charges are being preferred with a view to dismissal or otherwise as provided for in the Police Service Regulations, 1961.

(vi) The applicant was also advised that she could put before the Commissioner grounds on which to exculpate herself.

(vii) By handwritten letter dated 12th December 2009, the applicant acknowledged receipt of the documents and indicated that she wished to reserve her defence.

(viii) By Convening Order dated 25th January 2010, the Commissioner directed that a Court of Enquiry be convened to enquire into the disciplinary charges against the applicant.

- (ix) The Court of Enquiry convened on the 4th March 2010 and reconvened on several occasions. It concluded its hearing on 22nd July 2010. The President's Report and Notes of Evidence were forwarded to the Commissioner.
- (x) It was the finding of the Court of Enquiry that all charges against the applicant had been proved.
- (xi) Following the enquiry, the applicant was dismissed from the JCF and she appealed the decision.
- (xii) By letter dated 6th June 2011, the Commissioner was advised that the Privy Council had considered the applicant's reference and recommended to the Governor-General that she be dismissed, which he accepted.

Counsel's Submissions

- [10]** Counsel for the applicant submitted that the Commissioner had failed to follow proper procedure when he confirmed the decision of the President of the Court of the Enquiry because the President had exceeded his powers under Regulations 47 to 49, by allowing amendments of the charges without the Commissioner's approval. In the alternative, the President had failed to re-plead the applicant to the amended charges.
- [11]** Counsel also submitted that the failure by the Court of Enquiry to secure the attendance of Miss Althea Drummond and His Hon. Mr. Stanley Clarke to be cross examined, denied the applicant a fair hearing.
- [12]** Counsel contended further that the applicant was not given an opportunity to specifically confront Miss Drummond under oath as to whether she had received from the applicant, the summons for Mr. Witter.

- [13] In response, Counsel for the respondent contended that the amendments were permissible as they did not alter the charges in so far as the alleged conduct of the applicant was concerned. By replacing the word “issued” with “ordered” in charge one and “issue” with “order” in charge two, the substance of the charge was not changed as those amendments dealt only with the consequential action of the magistrate and not the alleged actions of the applicant. The amendments were therefore inconsequential and did not affect the charges levied against the applicant.
- [14] Counsel for the respondent also contended that the applicant and her representative had acquiesced to the amendment. She referenced the Notes of Evidence which reveal that the applicant’s representative had initially objected, but after being granted an adjournment to seek legal advice, indicated that he “wished to proceed with the amendment but no further amendments could be made.”
- [15] In relation to Miss Drummond and His Honour Mr. Stanley Clarke, counsel contended that the applicant was entitled, under regulation 48 (2), to request a summons for any witness she wished to call when it became apparent that the prosecution would not be calling them.
- [16] Counsel for the applicant also contended that the applicant had a legitimate expectation that the procedures laid down under the regulations would be followed and that the respondent would not endorse any *ultra vires* act by the President of the Court of Enquiry.
- [17] Counsel for the respondent countered by submitting that the Court of Enquiry had complied with the procedure in the regulations and that there was no evidential basis on which to ground the doctrine of legitimate expectation as was customarily known in administrative law.
- [18] The respondent also refuted the claim that the Commissioner had “rubber-stamped” the Court of Enquiry’s findings and submitted that the Commissioner

had considered not only those findings but also the Notes of Evidence, the nature of the offence committed by the applicant and the importance of integrity and honesty to the JCF.

Analysis

[19] In ***The Industrial Disputes Tribunal v. University of Technology Anors and Others*** [2012] JMCA Civ. 46, para. 24, Brooks JA, in the course of discussing the role of the review court, approved the following definition of judicial review by the learned editors of ***The Caribbean Civil Court Practice*** 2011, p. 431:

Judicial review...is concerned with the lawfulness rather than with the merits of the decision in question, with the jurisdiction of the decision-maker and the fairness of the decision-making process rather than its correctness.

[20] The purpose of the court's intervention, as articulated by the Privy Council, is "to ensure that the powers of public decision-making bodies are exercised lawfully." (***R. v. Lord President of the Privy Council ex parte Page*** [1993] AC 682, 701). In other words, the role of the court is to determine whether the public body acted within the parameters that are established by the legislature.

[21] The basis on which the Commissioner dismissed the applicant was that charges had been made out that she had engaged in professional misconduct related to her failure to serve a summons on an accused person, lying to a resident magistrate that she had personally served the summons, failure to properly investigate and prepare the summons, and causing the Court to order a warrant which was unjustified in the circumstances.

[22] The main issues to be decided on review are whether:

- i) the Court of Enquiry exceeded its powers when it allowed an amendment to the charges, and coming to its findings without re-pleading the applicant to the amended charges;
- ii) whether reliance on the findings of the Court of Enquiry rendered the Commissioner's decision procedurally unfair;
- iii) the decision of the Commissioner was arbitrary, oppressive, unlawful and unreasonable;
- iv) the decision was disproportionate in light of the offence;
- v) the Commissioner failed to take into account relevant matters in arriving at his decision; and
- vi) the Commissioner had acted in breach of natural justice principles thereby causing substantial prejudice to the applicant.

[23] I do not accept counsel's submission that the President exceeded his authority in amending the charges and accordingly it was procedurally unfair and prejudicial to the applicant for the Commissioner to have acted on the Report.

[24] The Court of Enquiry was convened to examine the nature of the specific allegations of unprofessional conduct and imputations against the applicant. It was not a court of law and had no powers other than to enquire into the specific charges that were referred to it. In other words, the Court of Enquiry had no power in its discretion and upon its own motion to strike out a new charge and/ or institute a new charge. But those acts are markedly different from a formalistic "correction" of language which it was felt necessary to ensure forensic nicety or accuracy.

[25] The substance of the charges was that the applicant lied to the Court and caused the Court to act consequent on that lie. Whether the formulation was that the Court "issued" as against "ordered" the warrant was not material to the charges.

Both formulations would have had the same effect, which is the ultimate issuing of the warrant. In either formulation, it was the applicant's conduct in relation to the Court's decision, which was the subject of the charges and not the Court's action *per se*.

[26] The amendment was therefore an unnecessary technicality which caused no material difference to the charges or the enquiry. It did not add any complexity or substance to the charges. The proceedings and evidence would not have been any different and the applicant was in no doubt as to the charges levied against her.

[27] Nothing prevented the Commissioner from amending the charges before a finding was made provided the amendment did not go to the substance of the charge, and it was unnecessary to have delayed the enquiry so that the Commissioner could make those inconsequential amendments himself.

[28] I have also considered that the President acted fairly when he adjourned the enquiry to allow the applicant and her representative to seek legal advice on the proposed amendments. In the end, there was no objection.

[29] I do not accept the submission that the failure of the President to specifically direct the Commissioner's attention to the amendments that were made to the charges, in his report, meant that the Commissioner was considering findings on different charges than he had approved. I have already said that the amendments were unnecessary and inconsequential. In addition, the Commissioner must be taken to have been aware of the amendments given that he had considered the Notes of Evidence which documented them. It cannot be maintained, on the evidence, that he had no appreciation of the charges to which the findings of the Court of Enquiry pertained.

[30] It follows that there is no ground for the submission, that in considering the report, the Commissioner failed to take into account, as a relevant matter, whether the President had followed correct procedure.

- [31]** It was also argued that because the applicant had not been re-pleaded there was a procedural defect. A disciplinary enquiry, by its nature, is not burdened with the habiliments of a criminal trial. The persons constituting the Court of Enquiry are not expected to be trained in the law and the rules of evidence and procedure, and even were it otherwise, on the facts of the case, failure to re-plead the applicant could not amount to prejudice.
- [32]** I accept the respondent's submission that the failure of the prosecutor to call Miss Drummond as a witness did not constitute a breach of the right to a fair hearing.
- [33]** The applicant had acknowledged service of the witness statements, to include that of Miss Drummond.
- [34]** At the commencement of the enquiry, the prosecutor indicated that eight witnesses would be called. However, after the fifth witness, he disclosed that only two other witnesses would be called. He named the witnesses and Miss Drummond was not included. It is to be noted that an earlier witness had indicated to the Court of Enquiry that Miss Drummond was in New Zealand.
- [35]** As the two witnesses were not available, an adjournment was granted for some two weeks to secure their attendance.
- [36]** I accept counsel for the respondent's submission that this was ample opportunity for the applicant to have requested that a summons be issued to secure the attendance of Miss Drummond, if the applicant thought it necessary or practicable to have done so having learnt that she was no longer to be called by the prosecutor. The right of any party to summon a witness is provided for in regulation 48 (2) which, *inter alia*, enables "...the parties concerned to apply to the president for summonses for such witnesses as they may require."

- [37] The applicant did not avail herself of this right and therefore cannot now say that she was denied a fair hearing because Miss Drummond was not available for cross-examination.
- [38] In the case of His Hon. Mr. Clarke, no witness statement had been served and no request for his attendance had been made.
- [39] I do not agree with counsel for the respondent that Miss Drummond would have been an unnecessary witness because the charges were primarily concerned with whether the applicant had lied to the court about serving a summons, thereby causing a warrant to be ordered.
- [40] It is clear from Charge 3 that the allegation was that the applicant had been guilty of dereliction of duty when she failed to “properly investigate and prepare summons in case Regina Vs. Dean Witter...” (sic).
- [41] The applicant’s defence was that she had commenced investigations, prepared the summons in question and gave it to Miss Drummond for her to pass on to Mr. Witter. Miss Drummond would therefore have been relevant to the applicant’s defence.
- [42] Notwithstanding, I will go no further than my disagreement with counsel in relation to the relevance of Miss Drummond because there was no complaint before this Court specifically related to Charge 3.
- [43] Having considered all the circumstances, I find that the Court of Enquiry was properly convened and carried out its duties in compliance with the regulations and requirements of natural justice. As it relates to the President specifically, I find that he acted impartially and in a manner which did not exceed his powers or was in any way prejudicial. The Commissioner’s reliance on his report was therefore not a procedural irregularity.

[44] Lord Mustill, in **Regina v Secretary of State for Home Department Ex parte Doody** [1994] 1 A.C. 531, 560-561, enunciated the requirements of fairness in this way:

*...My Lords, I think it unnecessary to refer by name or to quote from, any of the often cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) **Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer...***(my emphasis).

[45] [65] This statement of the law was cited with approval by the Court of Appeal in **Wood and Thompson v DPP** [2012] JMCA Misc. 1(17).

- [46] In this case, the applicant was given sufficient notice of the charges and had sufficient opportunities to be heard. At the time she was notified of the charges, she was also advised that she could make written submissions to exculpate herself. She chose to reserve her defence. She gave an unsworn statement and her representative made submissions at the Enquiry.
- [47] I do not find that there was anything arbitrary, oppressive, unlawful or unreasonable about the decision-making process of the Commissioner. He investigated the complaint, obtained a ruling from the DPP that disciplinary action be taken, convened a Court of Enquiry and considered its report. In the chain of events, he ensured that the applicant was properly informed of the charges and gave her sufficient opportunities to be heard. In all the circumstances, proper procedure was followed.
- [48] The Commissioner deponed to having also considered the Notes of Evidence, nature of the offence committed and the importance of integrity and honesty by a member of the JCF. These were not irrelevant considerations and it is well settled that a decision will only be found to be unreasonable if it is so absurd that no reasonable authority could come to that conclusion (*Associated Provincial Houses v Wednesbury Corporation* [1984] 1 KB 223). The facts do not support such a finding.
- [49] Counsel for the applicant submitted that the decision to dismiss was disproportionate having regard to the offence. For this submission to be upheld it would need to be established that the sanction of dismissal imposed a burden on the applicant that was unnecessary or disproportionate to the ends being pursued by the Commissioner.
- [50] Section 3(2) of the **Constabulary Force Act** reposes in the Commissioner sole operational and superintendence of the force. This requires him to exercise discipline over the force and ensure operational conduct by its members consonant with the public duty they are sworn to perform.

- [51] Conduct which is above reproach cannot be divorced from the essential characteristics required of a police officer. As Campbell J. aptly stated in ***Regina exparte Livingstone Owayne Small v The Commissioner of Police et al*** Claim No 2003/HCV 2362 delivered 18th September, 2006: "...if the officer's words cannot be relied on, his usefulness as a police officer is seriously impaired..."
- [52] At the conclusion of the enquiry, the President found that the charges had been made out. These were not trivial charges, and in a context of what the Commissioner considered to be "...the importance of integrity and honesty by a member of the JCF", it was not disproportionate for him to have concluded that dismissal was the appropriate sanction.
- [53] In the end, the evidence has established that procedurally, the Commissioner acted lawfully and his decision to dismiss the applicant was neither unnecessary nor disproportionate.
- [54] For these reasons, the orders sought are refused.
- [55] I do not consider this to be an appropriate case for an award of costs.