



[2026] JMSC Civ. 32

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2024CV00819

BETWEEN	MARJORIE FULLERTON	CLAIMANT
AND	THE BOARD OF MANAGEMENT OF THE MERL GROVE HIGH SCHOOL	1 <sup>ST</sup> DEFENDANT
AND	TEACHERS' APPEALS TRIBUNAL	2 <sup>ND</sup> DEFENDANT
AND	MINISTER OF EDUCATION	3 <sup>RD</sup> DEFENDANT

IN OPEN COURT

*Ms. Michele Champagnie instructed by Mr. Neco Pagon for the Claimant*

*Mrs. Kristina Jones instructed by the Director of State Proceedings for the Defendants*

*HEARD: 7<sup>th</sup>, 8<sup>th</sup>, 31<sup>st</sup> of October 2025, and the 6<sup>th</sup> of March 2026.*

**Judicial Review – Whether the correct procedure was followed by the Board and personnel committee of the Merl Grove High School in the dismissal of principal – Whether the members of the personnel committee who presided over the disciplinary hearing were tainted with bias – Whether the members of the committee made prejudicial statements prior to and during the disciplinary hearing that rendered the proceedings unfair and contrary to the principles of natural justice and breach of the claimant's right to a fair hearing. -Whether the decision of the Appeals Tribunal to uphold the decision of the Board is irrational. (s.16(2) of the Constitution of Jamaica.**

THOMAS, J

## INTRODUCTION

[1] This is a claim for judicial review. The claimant Dr. Majorie Fullerton was the principal of the Merl Grove High School until her employment was terminated by the Board of the Merl Grove High School (herein after referred to as the Board) on the 25<sup>th</sup> of

March 2022. She appealed the decision of the Board to the Teachers' Appeals Tribunal (hereinafter referred to as the Tribunal) on the 13<sup>th</sup> of April 2022. On the 28<sup>th</sup> of November 2023, the Tribunal dismissed her appeal. This was communicated to her by way of letter dated the 28<sup>th</sup> of December 2023.

**[2]** On the 27<sup>th</sup> of March 2024, the claimant was granted leave to apply for judicial review. Consequently, this claim was filed on the 9<sup>th</sup> of April 2024, seeking the following orders:

- (a) An order of certiorari to quash the decision of the 1<sup>st</sup> defendant to terminate the employment of the claimant as the principal for the Merl Grove High School.
- (b) An order of certiorari to quash the decision of the 2<sup>nd</sup> defendant to dismiss the appeal brought by the claimant against the decision of the 1<sup>st</sup> defendant to terminate the employment of the claimant.
- (c) An order of mandamus compelling the 1<sup>st</sup> defendant to return the claimant to her substantive post as principal for the Merl Grove High School to perform her duties.
- (d) Declaration that the claimant's right to a fair hearing guaranteed by section 16 of the Charter of Fundamental Rights and Freedom Constitutional (Amendment) Act, 2011 and at common law was breached by the 1<sup>st</sup> Defendant, inclusive of the personnel committee of the 1<sup>st</sup> defendant.
- (e) Damages.

### **Chronology of Events**

**[3]** I find it necessary at this juncture to outline a detailed chronology of events on facts that are not in dispute that led to the filing of this claim.

**[4]** By letter dated October 7, 2020, the then chairman of the Board Mrs. Gennette Clacken, requested the assistance of the Ministry of Education (hereinafter referred to as the Ministry) to conduct a comprehensive review of the school's financial operations. A team headed by Ms Ellen Ritchie, Acting Financial Controller, visited the school on November 16, 17, 20 and 30, 2020 and during those days carried out the requisite review. On completion of the review, Ms Ritchie prepared a financial status report dated November 2020, setting out the findings of the review of the school's financial records. Among the findings highlighted in this report are the following:

- (a) "Financial records in some areas are in need of immediate intervention. *“Examination of the records for the period September 2017 to August 2020 and interviews with staff members revealed numerous internal control weaknesses, several breaches of the Financial Audit and Administration Act (FAA Act) and other government related regulations”*.
- (b) *“Cash collected was receipted but not lodged intact; cash collected for summer school for the year 2017/18, 2018/19 and 2019/2020 were not collected by the bursary nor lodged to the school's account; cash collected from fundraisers were not seen receipted and/or lodged to schools account; it has become a regular practice for the principal to authorize the use of large sums of cash for purchases”*

**[5]** Ms Ritchie recommended that "Corrective action should be taken by the Board to ensure cash go through a petty cash system only, and the cap is maintained".

**[6]** The Board held a meeting on December 7, 2020. The claimant was present at that meeting. It was decided that in response to the financial report an action plan would be prepared by the claimant and her team and submitted by January 22, 2021. At another meeting of the Board held on May 13, 2021, the claimant stated that she could not respond to a review that was done in her absence while she was on leave. The chairman advised the claimant that she and her team may prepare the report, but it should come to the Board through the claimant; the report should be clear, and for each issue the report must state what will be done to mitigate the control gap, who is the accountable officer and the date when the mitigating controls would be implemented and that the report should to be submitted by the end of May 2021.

[7] At the Board's next meeting on the 24<sup>th</sup> of June 2021, the response, with the details that the Board required still had not yet been provided by the claimant. The issue was raised by the chairman, and the claimant was requested to give an update. She responded in the following terms

*"I like to hear you say that Sir. If I am the accountable officer, I should be allowed to be just that. I just want to update everyone that after checking/perusing my email I would have responded to the Board ... That response was sent January 29, 2021, at 11:13 p.m. ... So, this is the response Chairman. I said that I had no comments. That exactly was my words. I had no comments ..."*

[8] On June 25, 2021, the claimant sent the following response to the chairman Mr. David Hall and the Education Officer, Mrs. Joan Gordon Shaw. (The original email is dated January 30, 2021);

*"I have been tasked by your august body, to present an overview of the recently conducted financial review of the school's finances by a team from the Ministry of Education. Before delving into my response, please accept my profound apologies for my tardiness. This anomaly is a result of the fact that all this week our focus was concentrated on successfully hosting our first virtual parent consultation. It was an engrossing exercise for all concerned, but the projected outcomes were spectacularly achieved.*

*On the matter of the response to the financial review, based on my due diligence supported by further research regarding the recently conducted financial review and not an audit, I am confident that the response to same financial review as per your request is the purview of the Finance Chair and Bursar who have direct responsibility for same portfolio. The request for the financial review was initiated by the Chairman of the Board and the Finance Chair based on evidence subsequently gathered. A meeting of the Board members and not a Board meeting was held on November 30, 2020, where Ms. Ritchie (Financial Controller) gave a summary, reviewed findings and made recommendations. All activities surrounding the review were done at the Board level hence the response should be handled by the Finance Chair and the Bursar.*

*Furthermore, I was not privy to this financial review as I was on sick leave. Even the submission of the financial review bypassed the principal of the school and instead was sent to the bursar. Also, the "Thank you letter to the Finance Team of the Ministry of Education" done on the school letterhead was sent by the chairman and not from the school.*

*Again*

*Request for Financial Review-done by the Board Chairman*

*Finance Review Summary-done at meeting of the Board members except Principal*

*Final Financial Review Document- sent to bursar instead of principal*

*Thank you letter to MOEYI Financial Officers-done by the Board Chairman*

*Therefore, it would be inappropriate for the principal to respond under these conditions for an activity for which the principal was absent”.*

[9] On July 7, 2021, the Board held a special meeting via videoconference. The chairman made a complaint to the Board regarding the Board’s request and the claimant’s posture in relation to providing a response to the financial review. The meeting was adjourned to allow the personnel committee of the Board (herein after referred to as the committee) to meet and decide whether a disciplinary hearing was required. The Board meeting resumed, and the committee made the recommendation that a disciplinary hearing was required. The Board to include the chairman voted to accept the recommendation of the committee.

[10] The claimant was notified of the decision in a letter dated August 13, 2021, signed by the chairman of the committee, Ms. Aretha Willie. The relevant portion of the letter is outlined below.

***“Letter sent to Dr. Fullerton dated August 13, 2021***

*We make reference to the Board Meeting of the Merl Grove High School, on Wednesday, July 7, 2021, wherein the Board of Management agreed to proceed with a formal hearing in keeping with the dictates of the Ministry of Education, Education Regulation 1980 (57) in light of the validity of a documented complaint issued against you.*

*Pursuant to that collective agreement, you are hereby invited to attend a hearing in keeping with the Ministry of Education, Education Regulation 1980, 57 (b)(i)(ii)(iii) and outline below the specific areas for your attention:*

***REASON FOR THE HEARING:***

- i. On November 15, 17, 20, 30, 2020 a financial review of the Merl Grove High School was conducted by the Ministry of Education Youth and Information team, led by Miss Ellen Ritchie.*

*The findings of the financial review and attendant recommendations were formally submitted on December 7, 2020. The Financial Review revealed irregularities in the accounting system, alleged fraudulent transactions and grievous contraventions of the Financial Administration and Audit Act.*

- ii. You were requested to provide a definitive response, as well as remedial action plan to the financial review findings by both the previous and existing Boards of Management on three separate occasions, to which you were consistently adamant in your refusal. The most recent being your forwarded email on June 25, 2021.*
  
- iii. In light of the foregoing as outlined in (i) & ii) you are deemed in breach of The Education Act, The Education Regulation 1980, 55 (a), (b), (c), (f), (g), as well the Ministry of Education Youth and Information Accounting Manual for Schools.”*

*DATE OF HEARING: Monday, August 30.2021*

*Time of Hearing 1:00pm*

*Venue of Hearing Zoom Link will be provided at a later date*

*Kindly note that all participants will be required to have their video on with their image reflected at all times*

*Penalty if charges are proven; Disciplinary Actions in accordance with the statues of the Education Act, The Education Regulation 198 57(b)*

*You will be given the opportunity to respond to the concerns highlighted in the afore-mentioned complaint. You have the option to exercise your right to be accompanied by a friend or an attorney at law*

*.....”*

**[11]** On September 24, 2021, a letter was sent by the committee to Dr. Delroy Beckford, the claimant’s attorney at law, outlining the charges. It reads:

*“We refer to your letter dated September 20, 2021, and to the disciplinary hearing on September 21, 2021, in which your request for an adjournment was granted. Pursuant to your request in your letter dated September 20, 2021, we hereby provide the information and documents outlined below.*

*We wish to state that in our view the reference to the financial review in paragraph (1) of our letter dated August 30, 2021 to Dr. Marjorie Fullerton, which refers to the breaches by your client as well as her refusal to respond to the review and to provide remedial action referred to in paragraph ii of our said letter, provides particulars of the charges. However, for the avoidance of doubt, further particulars are outlined below:*

*Further particulars of charges against Dr. Marjorie Fullerton are as follows:*

- 1. Being the person responsible for all funds collected for Merl Grove High School, failed or neglected to ensure that all funds collected are properly receipted and lodged intact, in an official bank account on a daily basis or at the earliest possible time, which constitutes neglect of duty and inefficiency, in breach of Regulations 55(b) and (c) of the Education Regulations and in breach of section 5.4 of the Financial Administrative and Audit Act and Instructions.*
- 2. Failed or neglected to ensure that an official receipt is issued forthwith for all sums of money collected in and on behalf of Merl Grove High School using pre-numbered receipt book in breach of section 5.3 of the Financial Administration and Audit Act and Instructions and which constitutes neglect of duty and inefficiency in breach of Regulations 55(b) and (c) of the Education Regulations.*
- 3. Failing or neglecting to make adequate preparations for payment of suppliers and use of funds collected by the school and to ensure that the funds are not reimbursed or advanced to staff for goods purchased, which constitutes neglect of duty and inefficiency in breach of Regulations 55 (b) and (c) of the Education Regulations.*
- 4. Failing or neglecting to implement or have a system or procedure for the collections and lodgment of cash collected, preparation of payment vouchers and payment to suppliers resulting in unauthorized payments without her or the Chairman's authorization in breach of section 5.9.2 of the Financial Administration and Audit Act Instructions and constitutes neglect of duty and inefficiency in breach of Regulations 55 (b) and (c) of the Education Regulations.*
- 5. Failing or neglecting to ensure that the signatories to the bank account is regularized to include the Chairman and Vice Chairman in group A and Principal and Vice Principle/ Teacher in group B in breach of section 7.39 of the Financial Administration and Audit Act Instructions and which constitutes neglect of duty and inefficiency in breach of Regulations 55 (b) and (c) of the Education Regulations.*
- 6. Refusing to respond to requests by the Board of Management for a response to the Financial Review by Miss Ellen Ritchie, Regional Financial Controller (Actg.) and to provide a remedial action plan which constitutes improper conduct while in school, lack of discipline and or conduct which amounts to professional misconduct in breach of Regulations 55 (a), (f) and (g) of the Education Regulations.*

[12] The disciplinary hearing before the committee at which, the chairman of the Board, among others gave evidence, proceeded over a number of days spanning between the 21<sup>st</sup> of September 2021 and the 14<sup>th</sup> of March 2022. By report dated the 24<sup>th</sup> of March 2022, the committee informed the Board of its findings and recommendations. The committee found that, based on the evidence presented at the hearing, the charges against the claimant were proved. The committee recommended that the services of the claimant be terminated with immediate effect.

[13] At an emergency meeting of the Board held on March 24, 2022, the Board voted to accept the report and the recommendations of the committee. By letter dated May 28, 2022, the chairman advised the claimant that her services with the school were terminated effective March 25, 2022, for just cause.

[14] By notice of appeal filed on April 13, 2022, the claimant appealed the decision of the Board to the Tribunal. The appeal was heard over several days, namely, the 18<sup>th</sup>, 25<sup>th</sup>, and 27<sup>th</sup> of April 2023; the 16<sup>th</sup> and 18<sup>th</sup> of May 2023; and the 1<sup>st</sup> and 6<sup>th</sup> of June 2023. Having heard the appeal, the Tribunal in their decision dated November 28, 2023, dismissed the claimant's appeal and affirmed the decision of the Board. This decision led to the filing of the claim before this court.

### **The Evidence of the Claimant**

[15] The claimant's complaint to this court against the committee and the Tribunal are contained in the affidavits of Dr. Fullerton which were permitted to stand as her evidence in these proceeding.

#### *The Complaint Against the Committee*

[16] The claimant contends that; on the 7<sup>th</sup> of July 2021, at a Board Meeting, held via the Zoom platform, that was recorded (audio) the committee considered a complaint

made by the Board's chairman, David Hall. She states that the complaint was considered in 'private' but thereafter, and in breach of the Education Regulation, 57, the committee reported to the Board the details of pre-hearing/pre-judgment findings; and that "the pre-hearing/prejudgment findings made by the committee to the Board includes the following assertions:

*"Dr. Marjorie Fullerton has been consistent in her narrative regarding non - adherence to the sequential requests of the previous and existing Boards to respond to the financial review conducted at the Merl Grove High School in November 2020.*

*Dr. Marjorie Fullerton has failed in her responsibility to execute her administrative duties in accordance with the Education Act, the Education Regulations 1980 in this regard."*

*Dr. Marjorie Fullerton has not understood her role as a principal in this regard pursuant to the fact that even if she is absent, the period of review 2017 to 2020 was under her tenure as principal and does not negate that responsibility.*

*Dr. Marjorie Fullerton has not exercised due diligence to ensure that controls are in place and Governance requirements are met in this regard as the findings of said financial review revealed several aberrations based on the accounting gaps highlighted and breaches of the Financial Administration and Audit Act which would necessitate immediate remedial actions.*

*Pursuant to the foregoing it is the collective and unanimous recommendation of the personnel committee that Dr. Marjorie Fullerton has breached the Education Act, the Education Regulations 1980 section 55B, C and G."*

[17] She contends that; the committee reviewed pre-hearing material in its deliberation and the same formed part of its pre-hearing/pre-judgment findings against her, and that the speed (less than 15 minutes) at which the committee returned with its pre-hearing findings is suggestive that they had already prepared the material and findings prior to the complaint being referred to them, and prior to her being given an opportunity to be heard. She further contends that; having reported to the Board its pre-hearing/pre-judgement findings; the committee invited the Board to vote on whether to proceed with a hearing against her; and that the complainant, the Board chairman, Mr. David Hall, was present throughout the process, participating in the process and in fact voted against her.

[18] She states that she requested the committee to disclose the recordings of the 7<sup>th</sup> of July 2021 Board meeting to support her case, but, that request was flatly denied. Dr. Fullerton also states that at the hearing of the disciplinary proceedings, the committee noted that “its legal representative and itself, the personnel committee would present their case, call witnesses and have documents on hand to substantiate their position in this matter”. She asserts that, their position was already known by virtue of the pre-hearing/prejudgment findings as set out above.

[19] She also asserts that the legal representative of the committee served in a dual capacity – that he, prosecuted the claimant and acted as advisor to the personnel committee. She noted that, the legal representative (i) examined witnesses called by the committee, (ii) cross-examined her witnesses, (iii) presented written and oral submissions in opposition to her position and (iv) advised the committee on its decision-making process. She contends that the conduct of the proceedings in this manner, is contrary to the Education Regulations, 1980, to wit, **Regulation 57(4)**.

[20] Ms Fullerton, asserts that Gregon Samuels, the academic staff representative of the committee was guilty of apparent bias in that he stated in an email correspondence dated the 6<sup>th</sup> of September 2021, inter alia, that “*we are resolute that we will not be working with you [the principal]’...*” and that the “*the dystopia that is the hallmark of your [the principal’s] human resource interrelations, long gone unabated, will no longer be tolerated.*” This email correspondence, she says, was brought to the attention of the committee and objection taken as to Mr. Samuel’s bias at the commencement of the hearing.

[21] These objections, she states, that were maintained and repeated throughout the proceedings, notwithstanding her and her counsel’s participation in the hearing; were memorialized by the written submissions made on her behalf and also contained in her statement to the personnel committee dated the 14<sup>th</sup> of March 2022.

[22] She asserts that, the members of the committee unduly and unjustifiably interrupted the cross-examination of Merlene Lawrence, the bursar and made prejudicial statements which in effect sought to contradict the evidence given by Ms. Lawrence which

supported her defence. Dr. Fullerton contends that the committee breached **Regulation 57 (4)(d)** by failing to take notes of representations made and evidence given at the hearing. In this regard, she accuses the committee of failing to take and provide the said notes of critical evidence given at the hearing; to include evidence that (i)the complainant participated in the Board's meeting of the 7<sup>th</sup> July 2021; (ii)the inaccuracies of the bursar's report and the financial review, and the duties of the bursar and her role in relation to the issues highlighted by the financial review (iii) the interference by the committee (per the chairman, Aretha Willie) making biased statements as noted above. She asserts that the committee and the Board are guilty of bias or apparent bias; failed to observe due process; and/or breached her right to natural justice and the procedural safeguard put in place by the *Education Regulations* to guard against the actual and the appearance of bias.

**[23]** She also accuses the Board of failing to consider the procedural improprieties and illegalities raised by her. She contends that the Board in all the circumstances outlined, had a duty to act within the scope of its legislative framework; that the failure to adhere was communicated early; and the Board failed to discharge its duties.

### *The Complaint Against the Tribunal*

**[24]** Dr. Fullerton's complaints against the Tribunal are stated as follows: The decision of the Tribunal to uphold the Board's decision to terminate her employment was unreasonable as the Tribunal failed to have regard to the effect of the missing evidence on her ability to advance a meaningful appeal in respect of the evidence elicited from cross-examination which supported her defence. The findings of the Tribunal are irrational and unreasonable, in that the Tribunal having found that,

- a. *at para 46, "... the personnel committee breached Regulations 57(1)(a) and (b) as well as 57(5) when it presented an Interim report to the Board. The breach was further compounded when the Board having voted to accept the report went further and voted again, this time for the personnel committee to carry out a hearing."*

- b. *at para 47 "In continuation these breaches the chairman of the Board, Mr. David Hall, who is the complainant, not only presided over the Board Meeting but he voted on both occasions in the affirmative for the report from the personnel committee to accepted and for hearing to be held."*
- c. *at para 48, "The participation of a complainant in any matter relative to the process goes against the principle of Natural Justice and could be interpreted as interference or an attempt to influence the outcome of the enquiry",*

yet concluded that there was no breach of natural justice or of the regulations.

### **The Defence**

**[25]** In their defence the defendants rely on the affidavit evidence of Ms Aretha Willie, the then chairperson of the committee and that of Mr. David Hall, the then chairman of the Board.

### **The Evidence of Ms. Aretha Willie.**

**[26]** In her affidavit evidence Ms Willie outlined the following sequence of events: At the Board meeting held on July 7, 2021 by video conference a letter of complaint dated July 7, 2021 from Mr. Hall was tabled regarding the claimant's failure to respond to three previous requests by the Board to respond to issues raised in a financial status report dated November 2020, prepared by Miss Ellen Ritchie, Acting Financial Controller within the Ministry: The Board voted to adjourn the meeting to enable the committee, on which she sat as chairman, along with members, Dr. Donna Scott and Mr. Gregon Samuels, to meet and discuss the complaint: The committee met and discussed the matter in a separate video conference convened for this purpose: In their deliberations, they considered the documents which the Board had in its possession, namely the Financial Status Report, minutes of the Board, and the claimant's email of June 25, 2021: The committee concluded that Mr. Hall's complaint was not trivial and that a hearing should be held: The Board's meeting resumed, and the committee presented a report of its

findings. Dr. Scott presented the findings to the Board which were recorded in the minutes. The committee made the recommendation for the matter to proceed to a hearing which was voted upon and accepted by the Board.

**[27]** She further states that by letter dated August 13, 2021, she invited the claimant to attend a hearing on August 30, 2021, in light of the complaint and the decision of the 1st defendant on July 7, 2021. The reasons for the hearing were set out in that letter. (She exhibits a copy of this letter).

**[28]** She states that she further advised the claimant in the said letter that she would be given the opportunity to respond to the complaint and that she had the option of being accompanied by an attorney-at-law or friend.

**[29]** She states that at the disciplinary hearing convened on September 21, 2021, a further adjournment was granted at the request of Dr. Delroy Beckford, the attorney-at-law for the claimant who attended the hearing, and that by letter dated September 24, 2021, she provided him with further particulars of the charges, in addition to naming the witnesses to be called and attaching copies of pertinent documents.

**[30]** She also states that Mr. Garth McBean, KC attended the disciplinary hearing from October 12, 2021, at the request of the committee to assist in the conduct of the proceedings. "He supported the process by presenting the evidence and *examining witnesses called by the 1st defendant and the claimant*". She asserts that at the commencement of the hearing on October 12, 2021, she outlined the role of King's Counsel in the matter. That, his role would be confined to the presentation of evidence, counsel and witness examinations and did not include making decisions on behalf of the personnel committee, whether express or implied, as that was exclusively reserved for the members of the personnel committee. This explanation, she says she repeated at the continuation of the hearing on October 29.

**[31]** She indicates that the "witnesses for the 1st Defendant were Miss Ellen Ritchie, Acting Financial Controller of the Ministry, Mr. David Hall, Dr. Elizabeth Watson, former finance chairperson of the Finance Committee of the Board, and Miss Merlene Lawrence,

bursar at the school, and that the witnesses for the claimant were Mrs. Andrea Gray-Dwyer, community representative of the Board, Mrs. Ava Bigby-Edmond, PTA President and member of the Board, Mrs. Claudette Cameron-Stewart, past president of the Past Students' Association, Canadian Chapter, and Miss Simone Thomas, president of the Canadian Chapter of the Past Students' Association".

**[32]** She explains that: "Witness statements were submitted by all witnesses. The witnesses were allowed to represent their evidence at the hearing and were cross-examined by counsel and the personnel committee to clarify specific matters. The claimant was not cross-examined as her attorney advised of her unavailability on the date scheduled for same due to illness. The personnel committee permitted her witness statement and documentary support to be placed in evidence".

**[33]** Ms. Willie confirms that the hearing was recorded by her and that at the end of each sitting, she forwarded the recordings to Mrs. Lewis-Matthews to prepare the minutes. She says that in or around March 2022, Mrs. Lewis-Matthews was no longer available as her pregnancy had come to term. Ms. Willie states that Mrs. Lewis Matthews was not replaced, but that she continued to record the proceedings and thereafter forwarded the recordings to Ms. Ursula Shand-Farquharson, senior stenotype writer, and asked her to prepare transcripts which were later made available to the claimant's attorney. She admits that by email dated April 3, 2023, counsel for the claimant communicated, that the transcript of the recordings of the February 9, 2022, sitting was incomplete. She asserts that she checked the transcript and the recordings and confirmed that the transcript reflected the entirety of the recording and that it was only then that she recognized that the recording was in fact incomplete.

**[34]** She explains that the failure to record the entire proceedings was not deliberate, and that she was unaware that the recording had stopped during the hearing. She also indicates that she was unable to locate any other recordings of the hearing on that date. She states that she prepared an affidavit for use in the appeal to explain the absence of the additional notes from the sitting on February 9, 2022. She contends that all available minutes and transcripts of the sittings held in the hearing were provided to the claimant's

attorney and formed part of the record in the appeal hearing before the Teachers Appeal Tribunal.

[35] Ms Willie states that, after the hearing, the personnel committee prepared a report to the Board dated March 24, 2022, in which the committee outlined what took place at the hearing, commented on the relevant evidence, and set out their findings and recommendations. This report she says was tabled by the 1st defendant at a meeting held on March 24, 2022 when the Board voted to accept the report and to accept the recommendations of the committee to terminate the claimant's services. She also states that:

*“The personnel committee considered the evidence of the respective witnesses tendered at the hearing and concluded that the evidence corroborated the various allegations in the Financial Status Report. The personnel committee also perused other documents which formed part of the evidence including emails, memoranda and Board meeting reports. Additionally, the personnel committee reviewed pertinent sections of the Education Act, the Education Regulations, Financial Administration and Audit Act and the Ministry of Education and Youth Accounting Manual for Schools in its deliberations. It was the unanimous decision of the personnel committee that each of the 6 charges against the claimant had been made out and that the claimant had breached the Financial Administration and Audit Act, the Education Act and Education Regulations. Due to the gravity and magnitude of the proven charges, the personnel committee proposed that disciplinary action be levied and recommended that the services of the claimant be terminated with immediate effect. In arriving at its recommendation, the personnel committee carefully considered the matter and at all times acted without bias against the claimant”.*

### ***The evidence of Mr. David Hall.***

[36] Mr. Hall states that: Ms. Ritchie's Financial Status Report stated among other things, that “Records indicated that the financial records were at a critical stage in some areas that needed immediate intervention” and that corrective actions should be taken by the Board to ensure cash go through a particular system only and the cap is maintained” He says that several recommendations for improvement were made in the report including recommendations specific to the claimant. He also states that at a meeting of the Board on December 7th, 2020, it was decided that an action plan was to be prepared

by the claimant and her team and submitted by January 22nd of 2021 in response to the Financial Status Report. He asserts that at the Board meeting on May 15, 2021, the response was still pending, He states that he asked that the report be submitted by the end of May 2021, and that at another meeting on June 24, 2021, he asked the claimant to give an update on the report as the accountable officer.

[37] He states that her response was: if she was the accountable officer she should be allowed to be just that, and that after checking her e-mail she would have responded to the board, January 29, 2021, and that her response was that, she had no comment.

[38] He further states that on June 25th, 2021, he received an e-mail from the claimant which contained a previous e-mail forwarded to him, in which she stated that “the response to the financial review is the purview of the finance chair and bursar who have direct responsibility for the same portfolio”

[39] He also states that the July 7, 2021, meeting which was held by video conference, was about his letter of complaint dated July 7/2021 regarding the claimant’s non-compliance with his three requests as the chairman of the Board at previous Board meetings to respond in writing to issues raised in the report. He indicates that the Board meeting was adjourned to allow the personnel committee to meet; the Board meeting resumed and the personnel committee recommended a hearing; the Board voted to accept the recommendation.

### ***The Grounds raised in the Claim for Judicial Review***

[40] The grounds that are raised before this court, as contained in the claim form and the affidavit of Doctor Fullerton are as follows.

- a) *The personnel committee breached the procedure under the Regulations in acting on a complaint that was not in writing.*
- b) *In breach of the 1980, Education Regulations 88 (8) and (9) and contrary to the principles of natural justice the Board allowed the participation of the complainant (David Hall) in the decision-making process in that Mr. Hall presided over and voted at the 7<sup>th</sup> of July 2021 Board meeting.*

- c) *Members of personnel committee are guilty of the actual / apparent bias in that:*
1. *Mr. Gregon Samuel demonstrated bias by his email, dated September 6 ,20 21, sent to Doctor Fullerton shortly before the hearing before committee, in which he stated, that he was resolute that he would not be working with the principal.*
  2. *The personnel committee pre-judged the matter and made findings before any hearing; reported to the Board these findings and invited the Board to vote on whether they should proceed to a hearing instead of merely deciding whether a hearing was required*
- d) *The personnel committee acted as prosecutor and adjudicator, treated the matter as “its case” against Dr. Fullerton and its counsel Mr. Garth McBean acted as prosecutor while advising the committee. Members of the personnel committee unduly and unjustly interrupted the cross-examination of the bursar, Ms. Lawrence; made prejudicial statement which in effect sought to contradict the evidence given by Ms. Lawrence which supported the defence of the principal. In breach of (Regulation 57(4)(d) the personnel committee failed to take notes of representation made and evidence given at the hearing, to include evidence that the complainant participated in the July 7 ,2021 meeting; the inaccuracies of the bursar's report and the financial review; the duties of the bursar in relation to the issues highlighted by the financial review, the interference by the personnel committee's chairman Aretha Willie making bias statement.*
- e) *The decision of the Tribunal is unreasonable and irrational in that (a)The tribunal failed to have regard to the effect of the missing evidence on the principal's ability to advance a meaningful appeal in respect of evidence elicited on cross examination which. supported the defence of the principal (b) In finding that there were no breach of natural justice or the regulations.*

### **Grounds raised before the Tribunal**

**[41]** I also consider it necessary at this stage to mention the grounds that were raised before the Tribunal. They are as follows:

#### Ground 1

The process engaged in by the personnel committee in relation to the disciplinary hearing of the appellant was tainted with bias in that:

- (i) The members of the personnel committee made prejudicial and prejudgment statements as regards the appellant prior to and throughout the proceedings.
- (ii) The proceedings were tainted with bias, by the Board and the personnel committee prejudging the matter thereby depriving the appellant of a fair hearing.

(iii) The personnel committee failed to provide the appellant with documentary material, namely recordings of the Board meeting held on July 7, 2021, which was directly relevant to and tend to support the defence of the appellant.

(iv) The proceedings were conducted in a manner which was unfair to the appellant.

## Ground 2

The proceedings before the personnel committee were incurably bad in that the Board and the personnel committee failed to comply with the provisions of the Education Regulations 56 and 57, such breaches are but not limited to:

- i. The Board and personnel committee acted on a complaint of the chairman for the Board which the complaint was not in writing as is required by Regulations 56.
- ii. the personnel committee improperly and unlawfully reported prejudgment material and findings to the Board prior to the holding of a hearing in breach of Regulations 57(1)(b) and 57 (5)
- iii. the personnel committee invited and allowed the Board to vote on whether to initiate charges against the appellant in breach of Regulation 57.
- iv. the personnel committee performed a dual role of that of complainant/prosecutor and adjudicator in breach of Regulation 57 and the principle of natural justice
- v. the personnel committee engaged Queen's Counsel, Garth McBean who played a dual role of prosecuting the appellant on one hand and that of an advisory role on the other hand.

## Ground 3

The weight of the evidence neither supports the recommendation of the personnel committee which was that the allegations have been proved against the appellant nor does it support the decision of the Board to terminate the appellant's appointment as principal.

## Ground 4

The discrepancies and inconsistencies in the case against the appellant were so numerous and serious in nature that the personnel committee ought not to have found that the charges against the appellant were proved.

## Ground 5

The recommendation of the personnel committee and the decision of the Board to terminate the appointment of the appellant are palpably wrong, manifestly harsh and excessive in the circumstances of the case.

## Ground 6

The Board failed to supply the appellant with written notice containing details of its decision thereby further depriving the appellant a fair hearing in breach of Regulation 57 (6) of the Education Regulations and the principles of natural justice, thereby rendering the decision of the Board unsafe.

## The Issues

[42] The grounds that have been raised before this court in relation to the procedure before the committee and the Tribunal can be categorized under 4 board issues. These are

(i) Whether the process employed by the committee to terminate the claimant's employment was illegal.

(ii) Whether the Board withheld evidence that was crucial for the claimant to advance a meaningful appeal against their decision contrary to the principles of natural justice

(iii) Whether the disciplinary hearing was procedurally unfair such that claimant's right to a fair hearing guaranteed by Section 16 (2) of the Constitution was breached by (a) the members of the committee making prejudicial comments prior to and during the hearing (b) the members of the committee being tainted with bias

(iv) Whether the decision of the Tribunal in upholding the decision of the Board to include that of the committee was irrational.

## The Law

[43] The three established grounds for judicial review of administrative actions were outlined by Lord Diplock in the case of ***Council of Civil Service Unions and Others v Minister for the Civil Service*** [1985] AC 374. These are "illegality, irrationality and procedural impropriety". In the case of ***Chief Constable of the North Wales Police v Evans*** [1982] 1 WLR 1155, it was stated that the purpose of a judicial review court is to ensure that the aggrieved party received a fair treatment by the authority who is authorized in law to make a decision, but not to decide for itself whether the authority arrived at a conclusion which is correct in the eyes of the court (See paragraph 116))

[44] Essentially, this court is endowed with a supervisory jurisdiction and not an appellate one. As such, it is not for the court to review the merits of the decision of the decision maker with a view to substituting its own. The court should rather assess the propriety of the decision-making process. Unless it is found that the finding of fact was based on some illegality, procedural impropriety, or irrationality, the court must accept the findings of fact even if it would have come to a different conclusion on the same evidence and legal issues. (See also the cases *of Hotel Four Seasons Ltd v The National Workers' Union* [1985] 22 JLR 20; *Alcoa Minerals of Jamaica v The Industrial Disputes Tribunal and Ors.* [2014] JMSC Civ 59 *Michalak v General Medical Council* [2017] 1 WLR 4193; and *Linton C. Allen v His Excellency the Right Hon. Sir Patrick Allen & Ano.* [2017] JMSC Civ. 24 ;)

[45] In the case of *Council of Civil Service Unions and Others v Minister for the Civil Service* at page 410 Lord Diplock explains the meaning of illegality. It means that:

*“the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable. (le person” (Council of Civil Service Unions (n 1)); “my goodness, that is certainly wrong” (Neale v Hereford and Worcester CC [1986] I.C.R. 471); or “so devoid of any plausible justification” (Bromley LBC v Greater London Council [1983] 1 A.C. 768).”*

## The Regulatory Scheme

[46] I believe that in order, to properly address the issues in this case it is necessary to outline the regulatory scheme within the education sector, which are relevant to these proceedings. *The Education Act and Education Regulations* govern personnel and activities within the education sector.

[47] By virtue of **Section 43(1) of the Education Act** the Minister is given the authority “to make regulations generally for the proper carrying out of the purposes and provisions of the Act”. *This authority to make regulations includes.*

*“In particular but without prejudice to the generality of the foregoing regulations-*

- a) for the management and conduct of public educational institutions;*
- b) specifying the powers and duties of Boards of Management of public educational institutions and of Educational Boards*

**[48] Regulations 54, 56, 57, 59 and 85** of the **Education Regulations of 1980** govern, the procedure for disciplinary proceedings and the termination of employment of a teacher. **Regulation 54 (2)** reads:

*“Where the Board of any public educational institution intends to terminate the employment of any teacher in that institution other than a teacher employed on a provisional, temporary or acting basis for less than one year, the termination shall not have effect unless the procedure set out in regulation 56 to 59 are followed”*

**[49]** Regulation 56 reads:

*“Where the Board of a public educational institution receives a complaint in writing that the conduct of a teacher employed by the Board is of such that disciplinary action ought to be taken against the teacher, it shall, as soon as possible, refer the matter to its personnel committee for consideration pursuant to regulation 85.*

**[50]** Regulation 57.- reads:

*“(1) The personnel committee shall **consider** the complaint referred to it under regulation 56 and -*

- a) if it finds that the complaint is trivial and that a hearing is unnecessary, report such finding to the Board forthwith; or*
- b) if it finds that a hearing should be held, notify the complainant in writing of the date time and place of the hearing and give written notice within a period of not less than fourteen days before such date to the person complained against of-*
  - i. the charge or charges in respect of which the hearing is proposed to be held;*

- ii. *the date, time and place of the hearing;*
- iii. *the penalties that may be imposed under the Regulations if the charges are proven against such person; and*
- iv. *the right of the person complained against and a friend or his attorney to appear and make representations to the committee at the hearing.*

*(2) A person complained against who intends to be represented at the hearing by an attorney-at-law shall give written notice of such intention to the chairman or secretary of the Board, not less than seven days before the date of the hearing, and the Board shall inform the complainant.*

*(3) If a person complained against fails to appear at the hearing and the committee is satisfied that notice of the hearing was given to that person in accordance with paragraph (1)(b), the Committee may, if it sees fit, conduct the hearing in the absence of that person.*

*(4) At the hearing-*

*(a) both parties shall be heard and be given opportunity to make representations;*

*(b) any party may call witnesses and produce documents in support of his case;*

*(c) the committee may, at the instance of any party or, if it sees fit, order that any documents in*

*the possession of the other party be produced for the information of the committee;*

*(d) notes shall be taken of such representations as may be made or such evidence as may be given.*

*(5) The personnel committee shall report in writing to the Board not later than fourteen days after the date of the enquiry-*

*(a) that the allegations against the teacher have not been proved; or*

*(b) that the charges against the teacher have been proved and may recommend-*

*i. that he be admonished or censured; or*

ii. *in the case of charges relating to a second or subsequent breach of discipline, that, subject to the approval of the Minister, a sum not exceeding fifty dollars be deducted from his salary; or*

iii. *that he be demoted if he holds a post of special responsibility; or*

*that his appointment as a teacher with that public educational institution be terminated,*

*and the Board shall act on the recommendation as received from the personnel committee, or as varied and agreed at the discretion of the Board.*

*(6) The Board shall, within fourteen days after it has received the report of the personnel committee. give written notice containing details of its decision to the Minister and the teacher.*

**[51] Regulation 61** provides a right of appeal from a decision of the Board. It reads:

*“A teacher who is aggrieved by any action taken by the Board under paragraph (6) of regulation 57. may appeal to the Appeals Tribunal within twenty-eight days after the date of the action giving rise to such appeal.”*

**[52] Regulation 85** governs the appointment and composition of the personnel committee. It reads.

*(1) “The Board of Management of every public educational institution shall, for the purpose of facilitating inquiries into allegation of breaches of discipline by or against members of staff or students appoint a personnel committee to which the Board **shall** refer any such allegations, and such personnel committee shall consist of-*

*(a) in the case of a government owned institution-*

*(i) the chairman of the Board.*

*(ii) one nominee of the Council.*

*(iii) subject to sub-paragraph (c), the representative on the Board of the category of accused personnel.*

(b) in the case of an institution owned by a denomination; or Trust -

- (i) the chairman of the Board.
- (ii) one nominee of the denomination or Trust or the Board.
- (iii) subject to sub-paragraph (c), the representative on the Board of the category of accused personnel;

(c) where the accused personnel is the representative on the Board as described in sub-paragraphs (a) (iii) and (b) (iii), the category mentioned in those sub-paragraphs shall be entitled to nominate a representative for appointment to the committee.

(2) The quorum of the personnel committee shall be two, one of whom shall be the chairman or the vice-chairman of the Board.

(3) Upon completion of its hearing into the alleged breach of discipline the committee shall submit a report to the Board for action”.

**[53] Regulation 88, addresses** the responsibility of a member to withdraw where conflict of interest arises **88(8)** reads:

“No member shall vote on any question in which he has a direct personal interest”

**[54] (88). (9)** reads.

*“Where there is a conflict of interest, the member of the Board concerned shall declare his interest and shall not participate in the deliberations on the particular matter and he shall withdraw from the meeting during the period of the discussion of the matter”*

**[55] Regulation 21** addresses the maintenance of accounting records. It reads.

*“Accounting records for each public educational institution shall be kept by the appropriate officer of the institution and shall be maintained in accordance with the prescribed financial regulations. The Board shall delegate to the accounting officer through the principal responsibility for the proper custody and expenditure of funds of the institution”.*

[56] **Schedule D. 4** outline the responsibility of the principal. The relevant portions read.

- (4) *A principal shall be responsible as professional head of the institution and as chief executive officer of the Board of Management for-*
  - (b) *planning and administering the day-to-day educational programme and supporting services of the institution and carrying out such policy decisions as the Board may delegate for the efficient and orderly: of the day-to-day administration of the institution;”*
  - (c) *giving directions about the expenditure of the funds made available to the institution within the general policy laid down by the Board and outlined in the budget for the institution and be answerable to the Board for any failure to use such funds properly to keep adequate control over their expenditure;”*
  - (k) *“such other duties and responsibilities as may be prescribed by the Board or by the Minister”.*

[57] **Section 37 and 38** of the Act provide for the establishment of the Appeals Tribunal and outline its role and function

*Section 37 (1) provides:*

*“There shall be an Appeals Tribunal established for the purposes of hearing appeals from the Commission and appeals from disciplinary decisions by a Board of Management of any public educational institution.”*

[58] Section 38(3) and (4) read:

*“(3) Any person who is aggrieved by the refusal of the Commission to register him as a teacher or by any decision taken by the Commission pursuant to section 38 or by any disciplinary decision taken by the Board of Management of any public educational institution may appeal to the Appeals Tribunal within such time and in such manner as may be prescribed.”*

*(4) “The Appeals Tribunal may, on an appeal under subsection (3), either confirm the decision appealed against or vary or quash that decision, and the Tribunal may from time to time return the proceedings to the person or authority concerned with the making of that decision for further information or for such other action as the Tribunal thinks just” ...*

***Whether the process employed by the Personnel Committee to terminate the Claimant's employment was illegal.***

**Submissions**

**On behalf of the Claimant**

**[59]** On the issue of illegality counsel for the claimant submits that:

- (i) There was no written complaint as is required by **section 56 of the Education Regulations, 1980** and therefore there was no proper legal basis to ask the committee to consider whether or not a hearing should be held. The evidence that there was a written complaint by Mr. David Hall, who was the then chairman of the Board and allegedly the person who complained to the Board about Dr. Fullerton has been challenged by the claimant from the very start. The evidence provided by board member Ava Bigby-Edmond reveals that there was no written complaint and what was provided by the Board at the July 7, 2021, meeting were 3 letters. These are: a letter from the Ministry of Education regarding alleged breaches of Covid-19 protocols in a valedictory service on June 10, 2021; a letter from ODPEM regarding the same, and a letter from the President of the Associated Gospel Assemblies about school administration and negative publicity
- (ii) The Chairman of the committee, Mrs. Willie, acknowledged the delay in confirming the July 7 minutes. The claimant's attorney requested the Zoom recording of the meeting, which was refused, raising doubts about the veracity of the minutes. The process was flawed as, on a balance of probabilities, no written complaint was presented to justify referring the matter to the committee.
- (iii) The committee failed to follow proper procedures in bringing charges as no written complaint was provided as required by **Regulation 56**. As such, the committee had no power to proceed on an oral complaint. The decision to proceed breached **Regulation 57** and natural justice, making the process void ab initio. (She relies on the case of **MacFoy v United Africa Co Ltd.**) [1961] 3 All E.R. 1169.
- (iv) The chairman of the Board, voted to refer the matter to the committee. The Board, including the virtual complaint, David Hall, and not the personnel committee only, voted that a hearing should take place, which the Board was not entitled to do. The complainant, David Hall, was present throughout the process, participated in the process and in fact voted that the claimant should be charged. The presence of David Hall and his participation in the July 7, 2021 Board meeting are contrary to **Regulation 88 (8)** and **(9)** of the **Education**

**Regulations, 1980.**In involving the Board in the vote as to whether the claimant should be charged the committee breached **Regulation 57(i)** when it pre-determined the matter and shared its findings with the Board. Once it decided to have a hearing the next time that the committee should report to the Board about the matter is after the hearing, in the written report. The committee, where it decides to bring charges, it is not supposed to discuss the matter further with the Board until after the hearing has been held, when it will give a report to the Board to consider whether to lay charges. It was not supposed to have pre-determined the matter.

- (v) The 1st Defendant was obliged to produce the recording of the July 7, 2021, Board meeting, the primary evidence of the meeting, which they have refused to do, when the matter was appealed to the Teachers Appeal Tribunal.

### ***On behalf of the Defendants***

**[60]** Counsel for the Defendants submits that:

- I. The evidence of David Hall is that he tabled a letter of complaint dated July 7, 2021, to the 1st defendant at its meeting on that date, which letter is exhibited. The confirmed minutes of the meeting also reflect that the letter of complaint was tabled. Pursuant to Regulation 57(4), in light of the written complaint dated July 7, 2021, and the minutes of the meeting, the committee was under no obligation to accede to the request for a live recording and fairly exercised its discretion to refuse it.
- II. The allegation that no written complaint was made rests on the evidence of one witness, Mrs. Ava Bigby Edmond, who recalled that no formal written complaint was presented, but in the face of documentary proof to the contrary. her recollection should not be accorded such weight as to render the refusal unfair, and the claimant's assertion that the refusal is "evidence of a cover up" is unsubstantiated and salacious.
- III. The defendants state that they have placed before the court all available transcripts and documents from the proceedings before the committee and the Tribunal to enable the court to review whether the claim is meritorious. The entirety of the proceedings should be reviewed. (She relies on the **Board of Management of Bethlehem Moravian College v Dr. Paul Thompson and Teachers' Appeals Tribunal** [2015] JMCA Civ 41)
- IV. The issue of the non-disclosure of the recording of the minutes of the July 7, 2021, meeting was fully ventilated before the 2nd

Defendant at the appeal hearing, and the Tribunal agreed that once the minutes were confirmed they were sufficient evidence of what transpired at the Board meeting. **Regulation 56** was complied with. The documentary evidence supports this. The 2nd Defendant at paragraph 51 of its decision, stated conclusively that “We find that the chairman did in fact supply a written complaint.” That finding, being one of fact, ought to be accepted by the court sitting in judicial review. Any attempts to relitigate settled factual assertions should not be permitted. In light of the conflicting assertions as to whether a written complaint was made, the appropriate course is for the court to accept the finding of fact of the Tribunal.

### ***Discussion***

- [61] An examination of the legislative scheme reveals that the legislature gives the Tribunal the power not only to quash but also, to vary original decisions of the Board to include that of the committee. This is an indication that the Tribunal is not bound by any decision of the Board but is vested with the power to set things right that have gone wrong at the Board level. That is, on its own examination of the facts and circumstances of the case, with the proper application of the law, the Tribunal is authorized to substitute the order of the Board with its own order that it considers to be just. This, in my view, establishes a check and balance on the powers vested in the Board.
- [62] In the case of ***James Ziadie v Jamaica Racing Commission***, 1981) 18 JLR Campbell J, made the pronouncement that any misapplication or non-application of the rules of natural justice by an inferior tribunal can be cured by a subsequent proceeding in an appellate court or tribunal which possesses a clear power of review of the entire case or matter. In short, the responsibility of the Tribunal is to review the fairness of the proceedings at the level of the Board to include the disciplinary hearing of the committee and the reasonableness of the Board’s decision to dismiss the claimant, and to set things right where the Board fell into error.

- [63] It is noted that there was an extensive hearing on appeal before the Tribunal lasting over several days. Having examined all the documents in relation to the proceedings before the committee and those before the Tribunal I have also observed that counsel for the claimant presented detailed arguments, and supporting documents, in support of his contentions of illegality, bias and unfair proceedings before the committee. In essence, the Tribunal was presented with the opportunity to correct any defect in the proceedings by the committee, whether relating to bias, or any form of unfair hearing, or decisions not substantiated by the evidence. It is also of significance that no bias, nor prejudice is being alleged on the part of the Tribunal. The contention as it relates to the Tribunal is that its decision to uphold the findings and the decisions of the committee and the Board is irrational.
- [64] As it relates to the issue of irrationality, the Tribunal's treatment of the issues that were raised before it on appeal is relevant. That is, whether (i) as it relates to the Board and the committee and their handling of the disciplinary hearing, it can be demonstrated that there was procedural error amounting to illegality, or procedural impropriety: As it relates to the issue of procedural impropriety, the consideration surrounds the question of bias; withholding of material evidence; amounting to an unfair hearing, contrary to **Section 16(2) of the Charter of Fundamental Rights and Freedom of the Constitution** and the principles of natural justice. (ii) whether the Tribunal erred in addressing these issues, whether by applying the incorrect legal principles or, whether in addressing the issues, the Tribunal came to a decision that no reasonable Tribunal faced with the same issues could have arrived at.
- [65] The case of **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** [1947] EWCA Civ 1, established the principle of irrationality, which is often expressed as the 'Wednesbury' principle. The principle is founded upon a public authority taking into account factors that it ought not to have taken into account in making a decision, or its failure to take relevant factors into consideration that it ought to have taken account of, rendering the decision

unreasonable, disproportionate, illogical, absurd, arbitrary, or oppressive. The consideration is not whether the Judicial Review Court agrees with the decision, but whether it is one that a rational body could make faced with the same facts and circumstances. That is whether the decision of the public body is flawed fundamentally in logic and results.

- [66] In the instant case, as it relates to compliance with the procedure under the ***Education Regulations of 1980*** (the regulations), there is no dispute that disciplinary proceedings must be initiated by a complaint in writing. The contention before the committee, before the Tribunal and before this court is that there was no written complaint against the claimant before the Board for the committee to consider, whether or not disciplinary proceedings should have been held and as such the process was void ab initio.
- [67] In the case of ***MacFoy v United Africa Co Ltd***. [1961] 3 All E.R. 1169, the Privy Council did make the pronouncement that if the initiating process is void, then the entire proceeding which follows therefrom is also void ab initio. (see the Judgment of Lord Denning) Counsel for the claimant is relying on this authority to say that in the absence of a written complaint there was no basis for a disciplinary hearing and that any decision proceeding therefrom cannot stand. Counsel for the defendants, while not disagreeing with this statement of the law, submits that the Tribunal's finding that there was a written complaint before the committee is a finding of fact that a review court cannot disturb. Nonetheless, having outlined the circumstances under which a review court can disturb the decision of a public body, I will now examine the material before this court within the context of the legal principles outlined.
- [68] Ms. Bigby Edmond, who gave evidence on behalf of the claimant at the disciplinary hearing did say that from her recollection, there was no written complaint from the chairman, Mr. Hall. It not for this court in the exercise of its supervisory authority to determine the credibility of the witnesses as is indicated by the authorities. It is not on a fact-finding mission to determine on a balance of

probabilities whether as between Ms. Bigby Edmond and Mr. Hall who was speaking the truth. The fact finders were the committee and the Tribunal. The contest was between the evidence of Mr. Hall who stated that he tabled a letter of complaint dated July 7, 2021, regarding the non-response of the claimant to the financial review conducted by the Ministry in November 2020, and that of Ms Bigby Edmond who was relying on her recollection.

- [69] The letter dated January 7<sup>th</sup> signed by Mr. Hall was present before the Tribunal. The minutes of the 7<sup>th</sup> of July 2021 under the heading “Governance“ reflects that the chairman tabled a letter of complaint to the Board regarding the “non- response of the principal to the financial review conducted by the Ministry of Education Youth and Information in November 2020” The minutes went on to give further details with respect to the contents of the letter which is consistent with the evidence of Mr. Hall. At the disciplinary hearing before the committee Mr. Hall conceded that these minutes were confirmed in December 2021.
- [70] In challenging the fact as to whether there was a written complaint before the Board, counsel for the claimant, before the Tribunal and counsel before this court seek to place reliance on the failure of the Board to provide him with the audio recording of the board meeting of July 7<sup>th</sup>. However, the records of the meeting, recorded by the secretary during the said meeting were produced, albeit not in audio but written form.
- [71] While **Regulation 88(12)** stipulates that “The Board shall keep in proper form the minutes of all meetings of the Board and its committees and of any hearing or inquiry conducted by or on behalf of the Board or of any committee of the Board,” it does not specify the format in which the evidence should be taken or kept. That is, what is meant by “proper form”. In my view the written form would satisfy the requirement of “proper form” in that its contents are readily ascertainable.
- [72] Counsel appears to be challenging the credibility or the accuracy of the content of the minutes based on the fact that it was only confirmed in the December meeting. She appears to be intimating that there could have been adjustments to these

minutes in light of the preliminary objections raised on behalf of the claimant at the disciplinary hearing, that there was no written complaint before the Board. However, I view this contention against the background that, in spite of the fact that these minutes were confirmed in December, they were signed by the secretary and the chairman on the 21<sup>st</sup> of July 2021. That is, 14 days after the meeting and prior to the charges being preferred against the claimant. This was also prior to any objections being raised about the absence of a written complaint.

[73] It is not my responsibility to insert my own opinion on these facts but simply to decide whether, the committee and the Tribunal, applied the correct legal procedure in arriving at the decision that they did. (See In **R v Secretary of State for the Home Department, ex p Hindley** [1998] QB 751) The fact that there was documentary evidence of a written complaint signed by the chairman Mr. Hall on the 7<sup>th</sup> of July 2021; the minutes of the meeting of July 2021 made reference to that complaint, despite being confirmed months later, both the committee and the Tribunal were entitled to prefer that evidence over the evidence of Ms. Bigby Emund who was relying on her recollection. While the regulations indicate that the minutes should be recorded, there is no indication that this should be by audio recording. Therefore, the Tribunal was entitled to find as they did, that there was a written complaint before the Board. As such it is not correct to say that their decision on this issue is irrational.

[74] Counsel for the claimant also contends that the manner in which the referral of the complaint was dealt with by the Board is illegal. That is, contrary to **Regulation 57 (i)**. On this issue, at paragraph 52 of their majority judgment, the Tribunal ruled that, there was no evidence before them that the chairman, participated in the voting on the issue as to whether the Board should accept the decision that there should be a disciplinary hearing and:

*“Further, that his [the Chairman’s] participation in any of the pre-hearing meetings, were of no consequence. There was no evidence presented to the Tribunal that the Chairman, being the complainant, participated in the vote to decide whether the matter ought to go to the Personnel Committee for determination. Furthermore, by the provisions of the Regulations,*

*whether or not a vote had taken place, the matter would have had to be referred to the Personnel Committee. As such, his participation or lack thereof had no implication on the procedure, nor did it disadvantage the appellant in any way. There was therefore no breach of Natural Justice.”*

[75] Counsel for the claimant takes the view that the Tribunal erred in its ruling, that if the chairman participated in the vote to send the complaint to the personnel committee, “that is of no consequence”. However, on my reading of the regulations and in particular, **Regulation 56**, once the Board received the complaint in writing, which is *of such a nature that, the conduct is one that disciplinary action ought to be taken against the teacher*, the Board was mandated under the provisions to refer the matter to the committee. The relevant portion states “shall, *as soon as possible, refer the matter to its personnel committee for consideration*’. This was a mandatory step that was already pre-determined by the regulation, that the Board had no discretion to alter.

[76] So, since it was a predetermined requirement by law, this was not a decision that the chairman or any member of the Board had the power to influence. Essentially, the fact of referral, meant that the requirement of the legislation was complied with. As such, despite the fact that the Board had voted on the issue when there was no requirement for them to do so, in subsequently referring the matter to the committee, the Board would have complied with the regulation. Consequently, the finding of the Tribunal that the voting of the Board to refer the matter to the personnel committee is of no consequence cannot be viewed as irrational.

***Whether the Disciplinary Hearing Was Procedurally Unfair:***

***Whether the Board Withheld Evidence that was crucial for the Claimant to advance a Meaningful Appeal.***

[77] Counsel for the claimant, before the Tribunal and before this court submits that the failure of Board to provide counsel Mr. Pagon with the audio recording of the Board Meeting of July 7<sup>th</sup>. is contrary to the principle of fairness. Counsel asserts that the

Board was withholding primary evidence, material that was crucial to the claimant's defence and that, the Tribunal should have so found. In support of this contention, she relies on the case of **Coomaravel Pyaneandee v Paul Lam Shang Leen**.

[78] In that case, the claimant was one of several lawyers summoned to appear before a commission of enquiry relative to drug trafficking in the island of Mauritius. The purpose was "to make recommendations as appropriate, answer questions", and for the claimant to address his "unsolicited visits to prisoners involved in drug trafficking and acts amounting to perverting the course of justice". The claimant attended the hearing of the commission on the 7<sup>th</sup> of August 2017 and gave evidence denying any wrongdoing. The report of the commission that was published included passages that suggested that the claimant had had some involvement in, attempting to pervert the course of justice and shielding drug traffickers. It recommended further in-depth investigation of his role. The claimant sought leave to apply for judicial review of the lawfulness of parts of the report, contending that its findings in relation to him breached the rules of natural justice, were ultra vires, unreasonable and irrational, and should be expunged from the report. Leave to apply for judicial review was granted. There was a conflict in the evidence given by the claimant and the commissioners in their affidavits about what happened at the hearing, the questions asked, and answers given. He sought from the commission a copy of the transcript of the evidence he gave to the commission, but this was refused.

[79] At paragraph 42 of the judgment the court stated that:

*"The duty of candour in judicial review proceedings is well established in English law. A respondent to a judicial review claim is under a "very high duty ... to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide"*

[80] Further at paragraph 43 the court stated that:

*"The ordinary rules governing disclosure in civil litigation are not generally applied to applications for judicial review which characteristically raise questions of law against a background of agreed facts, so that disclosure is generally seen as unnecessary as a matter of English law and practice."*

*But where a public authority relies on a document that is significant to its decision, it is generally considered good practice to exhibit the document as primary evidence.”*

[81] The court also stated at paragraphs 65: and 66, that:

*“Whether those allegations (and other material facts) were properly put to the appellant was a significant and material dispute in these proceedings. The dispute was capable of easy resolution by production of the Transcript. Moreover, in the Board’s view, the Transcript does not support all the statements made by the Commission deponents in their affidavits. It could and should have been provided by the respondents and, in the absence of that, it could and should have been called for by the Supreme Court.*

*66. This does not mean that there was anything wrong in the Commission’s deponents serving affidavit evidence to explain what happened at the hearing and whether, as a matter of fact, the process adopted accorded with fairness and/or natural justice. To the extent that the appellant sought to suggest otherwise, the Board does not accept his submission.”*

[82] However, there is a clear distinction between the **Coomaravel Pyaneandee** case and the case at bar. Whereas, in the **Coomaravel Pyaneandee** case it was the transcript, that is the evidence recorded contemporaneously with the evidence of the witnesses that was not made available, in the instant case the minutes of the meeting were made available despite it being the written and not the audio version. That case did not lay down any principle that there was a duty to produce an audio version of the transcript in circumstances where the written document was made available. What was produced at the trial at the Supreme and Court of Appeal was affidavit evidence of the Commissioners explaining what transpired at the hearing.

[83] In the instant case the record of the meeting, recorded by the secretary during the meeting was produced. As indicated earlier in the discussion, there was no duty on the Board to have the minutes of the meeting recoded in audio form. Where there is a written report, that is the minutes, this in essence would be primary evidence of what occurred during that Board meeting of the 7<sup>th</sup> of July 2021. Therefore, the Tribunal was entitled to find as they did that the absence of the audio recording did not prejudice the defence of the claimant, that it did not bring about an unfair hearing.

***Whether the Members of the Committee made prejudicial comments prior to and during the Disciplinary Hearing; Treated the Hearing as Them Against the Claimant; Were tainted with bias***

Submissions:

**[84]** On this issue counsel for the claimant made the following submissions:

- (i) The committee pre-determined the outcome, acting as prosecutor rather than an impartial tribunal, which tainted both the committee and the Board with apparent bias. The prehearing findings which were made by the committee evidenced apparent bias, compromising the fairness of the process.
- (ii) *The Personnel Committee acted as prosecutor and pre-judged the matter. The chairman, Mrs. Aretha Willie refer to the case as their case; the witnesses as their witnesses; that they had documents on hand, "to substantiate their position" It is clear that this committee viewed itself as an active participant in the proceeding and in particular as the party who was bringing the charges and as such the process was unfair and the outcome was predetermined as the committee was not going to rule against itself. The process embarked upon in this case was inherently unfair as in order to rule in favour of the claimant, the committee would have had to rule against its own "case" and its own attorney. The statements in the email of Mr. Gregon Samuels indicate that he had already determined that the claimant was going to be separated from her job.*
- (iii) *The Board just accepted the personnel committee's report and recommendation without analysing it in any way. The Board failed in its duty to critically consider the report and the recommendations made. This is a case in which the Board and the committee did things backwards, so much so that it is fatal to the proceedings. The committee made no effort to analyse the evidence favourable to the claimant and to explain why it was not accepted, they found that all of the charges were proved without any proper analysis of the evidence and they gave no weight to previous assessments of the claimant on which she scored very high marks. They had a duty to engage with that evidence in a forensic manner in order to reach a decision*

on whether the allegation was proven against the claimant. The Board did not say which one of the charges was serious enough to warrant the sanction of dismissal which they were imposing. They did not indicate any reason for their decision and whether they had considered the claimant's service record or any factors in mitigation (Se relies on the case of **C.D. v the Board of Management of a National School** [2019] IEHC 819, C.D.)

### **By Counsel for the Defendants**

[85] Counsel for the Defendant made the following submissions:

- (i) *The submission that the committee "predetermined the matter" is unsubstantiated. This preliminary assessment was solely to determine whether a hearing was warranted as the committee was then acting as a "filter mechanism... which obviates the need for the committee to spend time giving extended consideration to unfounded complaints." (She relies on the case of **Eustace Wilberforce Grant v The Teacher's Tribunal and the Attorney General** [2006] UK PC 59). The 2nd defendant found that the committee's recommendations merely demonstrated that a prima facie case was made out and did not breach the regulations, and that the Board was entitled to act on those recommendations.*
- (ii) *The Claimant's complaint regarding the role of Mr. Garth McBean KC is also unsupported, as the evidence shows that his role was confined to presenting evidence and examining witnesses, with decision-making expressly reserved to the committee. **Regulation 57(4)(a)** permits both parties to be heard and to make representations, and in this matter both the claimant and the 1st defendant called witnesses and presented documents at the hearing. Further, evidence before the committee revealed specific instances where the claimant failed in her legal obligation to ensure monies paid into the school were managed in accordance with the **Education Regulations** and the **FAA Act**. There was sufficient evidence for the committee to conclude that the charges had been made out. In its report to the 1st defendant dated March 24, 2022, the committee carefully reviewed all witness' evidence, including evidence supporting the claimant's position, and outlined its findings. The procedure adopted was clearly inquisitorial which allowed the committee to question any witnesses including the claimant during the hearing. (She relies on the case of **Junnet Lynch v Teacher's Appeal Tribunal and Ors.** [2019] JMISC Civ. 80,) It is inappropriate to hold the personnel committee to the standard of a court of law. ( She relies on the **Board of Management of Bethlehem Moravian College v Dr. Paul Thompson and Teachers' Appeals Tribunal**( Supra))*

- (iii) *When the entirety of the proceedings is reviewed, the evidence as a whole supports the finding that the claimant was accorded a fair hearing and that the rules of natural justice were observed ( She relies on the case of the **Board of Management of Bethlehem Moravian College v Dr. Paul Thompson and Teachers' Appeals Tribunal** [2015] JMCA Civ 41) As it relates to the allegations of bias, the question for the court is whether a fair-minded and informed observer, considering all the facts, would conclude that there was a real possibility that the personnel committee was biased. The defendants submit that the answer is no. (She relies on the cases of **Porter v Magill** [2002] 1 All ER 465; **Helow (AP) v Secretary of State for the Home Department (Scotland) and another** [2008] UKHL 62; **Henriques v Tyndall and Others** [2012] JMCA Civ 18.)*
- (iv) *The statements attributed to Mr. Gregon Samuels did not relate to the subject matter of the complaint, and the claim that he “already determined that the claimant was going to be separated from her job” is untrue. In context, his correspondence was a response to specific matters raised in a previous email from the claimant. This distinguishes the case from *The Board of Management of Bethlehem Moravian College v Dr. Paul Thompson*, where the Court found bias proved. That it “was material allegedly relevant to the matter on which they were expected to adjudicate forthwith, having direct association with the substance of the charges before them”.*
- (v) *Any “pre-judgment findings” communicated by members of the personnel committee reflected its assessment that a prima facie case was made out and that the matter should proceed to an enquiry under Regulation 57(4) of the Education Regulations. Treating such findings as bias would ignore the statutory power of the personnel committee to conduct a preliminary review to determine whether the allegation was trivial or required a hearing.*
- (vi) *The findings related to breaches of the Education Regulations and the FAA Act underpinning the charges against the claimant were not materially challenged. Instead, the claimant mainly sought to excuse her conduct or shift blame to staff within the school's bursary. The evidence, including the Ministry's Financial Report, showed several breaches directly attributable to the claimant. Therefore, fairness was achieved, as any differently constituted tribunal hearing the same evidence would likely reach the same conclusion. The findings of the personnel committee from the disciplinary hearing and the Tribunal's decision on appeal were reasonable, rational, and grounded in facts.*
- (vii) *Given the compliance with the Education Regulations and the observance of natural justice, including the opportunity for the claimant to be heard, the claimant received a fair hearing under section **16(2) of the Charter**. She is therefore not entitled to the declaration or damages sought.*

## Discussion

- [86] Counsel for the claimant takes the position that the committee had prejudged the claimant even before the commencement of the disciplinary hearing and as such she could not have been afforded a fair hearing before them. She points to the expressions used in the committee's report to the Board with regards to their decision that a disciplinary hearing should be held. She also points to the expressions used in the letter written to the claimant outlining their decision as also those used at the commencement and during the disciplinary hearing. On this issue the Tribunal found that there was no prejudice to the claimant. At paragraph 53 of the decision it stated: *"The Tribunal accepts the view that the prejudicial material and statements, so coined by Counsel Mr. Pagon, amount to their display of a prima facie case being made out. It acknowledges that the personnel committee had made recommendations to the Board to proceed to a disciplinary hearing and that it also sent a letter notifying the Appellant of the charges against her, the date for disciplinary hearing and that she had a right to have an attorney or friend accompany her to the meeting ..."*.
- [87] Counsel for the defendants takes the view that the decision of the Tribunal is rational and as such it is one that should be endorsed by this court. However, I find it to be of paramount importance for me not only to examine the terminologies employed by the committee in relation to this issue but also the overall context. In the case of **Grant v. The Teacher's Appeals Tribunal & Anor** (Jamaica) [2006] UKPC 59 (7 December 2006), a hearing was conducted by a personal committee into a complaint by the principal against Mr Grant. At the end of the hearing of the evidence but prior to the final decision, one member of the committee made the comment that Mr Grant deserved the "ultimate penalty". Subsequent to that but prior to the personnel committee's report to the Board, under **regulation 85**; it was discovered that the term of the appointment of the Board members had expired. As such neither the Board nor the personnel committee had authority to act in relation to the complaint.

[88] Consequently, the charges had to be reinvestigated by the personnel committee of the newly appointed Board with the same members making up the personnel committee. The matter was scheduled to be heard de novo. Mr Grant refused to participate on the basis that he would not get a fair hearing, before the committee, and that members of the committee were biased and lacking in integrity. He then left the hearing. The proceedings continued without his participation, whereupon the committee found him guilty of unprofessional conduct, neglect of duty and insubordination, and recommended the termination of his employment. He appealed to the Teacher's Tribunal, which dismissed his appeal, as did the first instance court on judicial review, and then the Court of Appeal. He appealed to the Privy Council, with leave of the Court of Appeal. His main contention was about the validity of the hearing before the personnel committee at the second hearing; that it was comprised of the same persons, one of whom had expressed at the earlier hearing a conclusion that was adverse to him. He submitted that this deprived him of a fair hearing.

[89] At paragraph 27 in reference to **Regulation 57 (i) (a)** their Lordships stated:

*“This is a provision designed as a filter mechanism, not uncommonly found in disciplinary codes, which obviates the need for the committee to spend time giving extended consideration to unfounded complaints”.*

[90] However, at paragraph 30, they made the point that:

*Much may depend on the facts of individual cases, but their Lordships do not consider that a hearing will necessarily be unfair if a committee or other body has heard a complaint before and proceeds to rehear it before reaching a final decision. The rehearing may still be fair and valid even if the committee has earlier reached a conclusion on the subject matter, provided it gives genuine and fair consideration to the case and any further facts or arguments put before it on the second occasion. In this respect their Lordships are of the view that, notwithstanding the difference in context and relevance of the statement, the opinion expressed by Lord Reid in *Ridge v Baldwin* [1964] AC 40 at 79 is apposite and applicable to the present case:*

*“I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present his case, then its later decision will be valid.”*

[91] And further at paragraph 31 the court stated that:

*“Those conclusions may have been subject to amendment as the result of discussion between the members before they decided on their report to the Board, but it was not improper for Mrs Nelson to have reached at least a provisional conclusion at that stage. The important thing was that she and the other members of the committee should be prepared to give proper consideration at the rehearing to the possibility of reaching a different conclusion after hearing the evidence and any further material or arguments put before them. There is no indication in the evidence that they failed to do so and the whole tenor of the minutes of the meeting of 20 May 1999 is one of fair and open-minded reconsideration of the case.”*

[92] In my view the principle to be extracted from the aforementioned case is that even if the committee came to an initial erroneous decision, having realized that error, it is not precluded from correcting it on a fresh hearing, on the condition that it allows the affected party a fair opportunity to present its case. Importantly, also is the fact that in the **Grant** case the comment regarding the claimant in relation to the first hearing was made after a hearing of all the evidence. As such the comment was evidence based, despite the fact that the hearing turned out to be a nullity on account of the fact that the Board’s tenure had expired at the time of that hearing. Applying the principle extrapolated from the aforementioned case, the question that arises is this; can it be said that the members of the committee in the instant case came to a decision on a balance of a fair assessment of the evidence.

[93] In the final paragraph of its report to the Board regarding its decision to hold a disciplinary hearing the choice of the words of the committee that *“the collective and unanimous recommendation of the personnel committee that Dr. Marjorie Fullerton **has breached** the Education Act, the Education Regulations 1980 section 55B, C and G.”* does convey the impression that they had taken a definite stance that the claimant had breached the regulations. This was further compounded by the content of the letter to the claimant on the 13<sup>th</sup> of August 2021 in which she was told that she was *“deemed”* to be in breach of the regulations. That is, the natural and ordinary meaning of the word *“deemed”* is that an assumption had already been arrived at by the committee that she was in breach of the regulations.

- [94] I take note of the fact that in their decision, the Tribunal highlighted the fact that “the committee had made recommendations to the Board to proceed to a disciplinary hearing and that it also sent a letter notifying the appellant of the charges against her, the date for disciplinary hearing and that she had a right to have an attorney or friend accompany her to the meeting... and that she “will be given every opportunity to respond to the afore-mentioned complaint”. The letter also noted the penalty” if the charges are made out”. The Tribunal treated with this as sufficient indication that there was no evidence of prejudice in that report.
- [95] However, in my view and has been indicated in the **Grant** case “*much may depend on the facts of individual cases.*” Context is relevant to these considerations. While the information that the claimant had a right to representation and a right to present her case appears to be inconsistent with a predetermination of guilt, I take note of the fact that **Regulation 57(i)** stipulates that this information must be conveyed to the individual teacher in the notice informing the teacher of the particulars regarding the hearing. As such, it cannot be automatically presumed that this is an indication of the absence of predetermination. It must be assessed within the context of all the other material available to this court.
- [96] Counsel for the claimant also contends that the prejudice on the part of the members of the committee was also displayed in their attitude and conduct of the hearing. Her submission in essence, is that they assumed the role of both prosecutor and adjudicator. Counsel for the defendants in her rebuttal of these assertions, relying on the authority of ***Junnet Lynch v Teacher's Appeal Tribunal and Ors***, submits that this court ought to accept that their conduct was merely inquisitorial. In the case of ***Lynch*** one of the bases on which the decision of the personnel committee was challenged was that chairman who questioned the witnesses extensively, acted unfairly, and displayed bias in that he “cross-examined” the claimant.

[97] At paragraph 39 of that judgment, Brown J opined:

*“In this case the personnel committee was established in keeping with the Education Act and Regulations to inquire into the claimant’s conduct. It was required to hear and assess the evidence and argument and then to make a report along with their recommendations to the Board. The procedure adopted was clearly inquisitorial which allowed the committee to question any witness including the claimant during the hearing. Consequently, I do not agree that the chairman and vice chairman were acting as prosecutor and judge”*

[98] However, having examined the transcript of the proceedings relating to the instant case, in my view, the **Lynch** case is distinguishable from the instant case. In the case at bar, in contrast with the **Lynch** case, and as pointed out by counsel for the claimant there were several instances in which chairman of the committee referred to the witnesses who were called in support of the allegations against the claimant as either: *our witnesses*”; the *“witnesses for the personnel committee”* or *the witnesses for the Board”* I will proceed to high light some of these instances. At the disciplinary hearing on the 12<sup>th</sup> of October the transcript reflects that in her opening address to the persons present on the Zoom platform Ms. Willie indicated that: *Mr. Garth McBean and the personnel committee **would present their case calling witnesses** and have documents on hand to **substantiate their position in this matter:**”*

[99] It is also noted that “the chairman advised that the witness to be called **on behalf of the personnel committee were:**

1. Ms. Eileen Ritchie, Acting Regional Financial Controller in the Ministry of Education, Youth and Information.
2. Mr. David Hall, Chairman of the Merl Grove High School Board of Management.
3. Dr. Elizabeth Watson, Former Chairman of Finance Committee of the Merl Grove High School Board of Management.
4. Ms. Merlene Lawrence, Bursar of the Merl Grove High School.

5. Mrs. Donna Shand-Cameron, Former Secretary of the Merl Grove High School (with direct reporting lines to Dr. Marjorie Fullerton).
6. Dr. Marjorie Fullerton”.

[100] The transcript for that date further indicates “The chairman reiterated the aforementioned breaches that Dr. Fullerton was alleged to have made and prepared to call **its first witness**, Ms. Eileen Ritchie, **on behalf of the personnel committee**”. Also, at Page 5, 7<sup>th</sup> paragraph - with respect to the hearing which continued on October 29, 2021, it is noted that, “The chairman advised that the hearing would break for five minutes at 12:00 pm and reconvene at 12:05 pm as per Dr. Beckford’s request. The hearing resumed, and the personnel committee prepared to call **its second witness**, Mr. David Hall”.

[101] On page 9, last paragraph of the committee’s report to the Board, signed by the members of the committee, dated March 24, 2022, regarding their decision in relation to the hearing, the committee stated:

[102] “The personnel committee concluded **their case** on the 3<sup>rd</sup> of March 2022. Further, on page 17, paragraph 4 of the said report they stated:

*“It is our opinion and that of legal counsel that **our witnesses** called in the matter were quite explicit and specific in their responses to the plethora of questions asked by Dr. Fullerton’s attorneys during cross-examinations. There was no ambiguity in their responses as they detailed facts defending their various witness statements with honesty and truth”.*

[103] I must also point out another distinction; I have identified between the instant case and the **Lynch** case. In the **Lynch** case, the use of the word “*cross-examination*” was attributed to the note taker. However, no such assertions are being made in this case. In any event, the use of the impugned terminologies continued in the report signed by Ms. Wille. As such the members of the committee cannot deny responsibility for the presence of these terminologies in the transcript. Essentially, there is no dispute that these were the expressions of the chairman Ms. Willie during the course of the disciplinary hearing.

**[104]** Additionally, the following exchange between Doctor Scot, who was one of the members of the committee presiding at the hearing, and a witness for the claimant Ms Bigby Edmond depicts the posture of the committee on the matter. This is to be found at page 720-725 of the transcript.

***Dr. Scott:** Mrs. Bigby Edmond, for clarity I did not submit a motion. I would like to suggest to you that when we convened that we asked for an additional time to complete the documentation. I would like to suggest that to you. I would like to suggest to you that you also voted for the matter at hand to go to the personnel committee and I will suggest that to you.*

***Mrs. Edmund Bigby:** I did, I would not deny that, I did. Because I thought that it was matter that was outstanding for too long that needed to be settled so that we could move forward as a Board.*

***Dr. Scott:** I would also like to suggest to you that the personnel committee did not put the document upon the screen because the document was not a formalised document, it was a document done when we met, Mrs. Willie, Mr. Samuels and myself and that is why we requested additional time to complete the document. I would like to suggest that to you.*

***Chairman:** Yes, Dr. Scott, are you through?*

***Mr. Pagon:** Give the witness a chance to understand because it is a little bit cumbersome. So let me ask the witness. Did you understand the final suggestion made by Dr. Scott?*

***Mrs. Bigby:** That additional time was requested but it still was inadequate for the depth of response that came. We were not- we were just off at first for maybe the 15 minutes. I don't even remember how much time was given if there was additional time but it was not significant.*

***Dr. Scott:** I would also like to suggest to you that the document was not 15 minutes. I would like to suggest to you that it was approximately ...*

***Mrs. Bigby:** Which document was not 15 minutes?*

***Dr. Scott:** The document that was presented that you suggested was pre prepared you said it was 10 to 15 minutes in your affidavit. I would like to suggest to you that it was six minutes.*

*Mrs. Bigby: All right, it is not the affidavit or what you have presented that I am saying was for 15 minutes. I was referring to the time that we were off the zoom while you were deliberating.*

*Dr. Scott: Mrs. Willie?*

*Chairman: Yes, Dr. Scott.*

*Dr. Scott: Over to you”.*

[105] It is evident from the above-mentioned interaction between Doctor Scott and the witness for the claimant, that Doctor Scott was seeking to contradict the witness and suggesting to her that what she said in her evidence was not in fact so. This in essence does not demonstrate an inquisitorial approach as the interaction does not appear to be one seeking clarification. The appearance is that of a member of the committee taking on an adversarial approach towards the witness. That the committee was inserting itself as a part of the proceedings. It was introducing evidence, that is, the suggestion that there was no formal document presented by the committee at first, at the July 7<sup>th</sup> meeting; that the committee asked for more time to consider the matter; and by suggesting to her that she voted for the referral to the committee.

[106] Counsel for the defendants has submitted that the court must bear in mind that the members of the committee are not legally trained. This fact I am cognizant of and do bear it in mind in treating with the issues. I am, however, guided by the principle expounded in the case of **The Board of Management of Bethlehem Moravian College v Dr. Paul Thompson**, that even lay persons when they are called upon to adjudicate on issues, are expected to act independently. At paragraph 172 of that judgment the court had this to say:

*“In the context of the instant case the members of the Committee are not legally trained much less judicial officers.*

*It is true though that as Lord Mance said, “even lay people acting as jurors are expected to put aside any prejudices they may have”,*

[107] As such, I am constrained to share the view of counsel for the claimant that the committee who was supposed to be independent arbiters of the facts regarding the complaint before them, treated the proceedings as if they were the complainant against the claimant. Essentially, even if I were inclined to the view, that, their pre-hearing pronouncements, that the claimant “had breached” the regulations: and that she was “deemed “in breach of the regulations, were inadvertent mischaracterization of their, approach, role and function on the matter, they had the opportunity at the hearing to display a conduct that was consistent with fairness and impartiality. That is to dispel the notion that they were entering in the proceedings with a mindset that was unfavourable to the claimant. However, regrettably this was not done.

[108] The members of the committee assumed the role that was reserved for the complainant and his witnesses in the proceedings. This rendered the proceedings unfair and contrary to the principles of natural justice and the rights guaranteed under **Section 16 (2) of the Constitution**, which stipulates that: *“In the determination of a person's civil rights and obligations or of any legal proceedings which may result in a decision adverse to his interests, he shall be entitled to a fair hearing within a reasonable time by an independent and impartial court or authority established by law.*

[109] Additionally, there is no indication that the Tribunal took into consideration, all the aforementioned utterances and conduct by the members of the committee in arriving at their conclusion that the “prejudgment findings “were merely an indication that a prima facie case was made out”. In my view, their failure to do so has caused them to arrive at a conclusion on this issue that no reasonable tribunal would have arrived at. As such, I conclude that their decision on this issue is irrational.

## Apparent Bias

- [110] On this issue of apparent bias, counsel for the claimant contends that Mr. Gregon Samuels was guilty of apparent bias. This she says, is demonstrated in an email sent by Mr. Samuels to the claimant prior to the hearing. Counsel for the defendant takes the position that the statements of Mr. Samuels did not relate to the subject matter of the complaint. She disagrees with the assertions of counsel for the claimant that the statements indicate that he” had already determined that the claimant was going to be separated from her job.”
- [111] Several authorities have outlined the course the court should take when addressing the issue of apparent bias. In *R v Gough [1993] 2 All ER 724*, the House of Lords held that the correct test was to ask whether there was a real danger that the claimant had not had a fair trial. However, this must be real and not fanciful. In *George Meerabux v the A.G of Belize* [2005] UKPC 12, the Judicial Committee of the Privy Council confirmed that the test of apparent bias is whether a fair-minded lay observer, having considered the facts, would consider that there was a real possibility of bias. In *Porter v Magill* [2001] UKHL 67, it is stated thus, “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”.
- [112] In the case of *Carrol Ann Lawrence-Austin v The Director of Public Prosecutions* [2020] JMCA Civ 47, at paragraph 36 Phillips JA stated that “The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased (See also the cases of *Joseph Lennox Holmes v Royal College of Veterinary Surgeons* [2011] UKPC 48 and *Helow v Secretary of State for the Home Department and Anor* [2008] UKHL 62,)
- [113] Cases such as *Patrick Tibbetts v Attorney General of the Cayman Islands* [2010] UKPC 8; *Porter v Magill*, and *Belize Bank Limited v The Attorney*

**General of Belize & Others** [2011] UKPC 36, have further described the fair-minded observer as “neither unduly complacent, naïve nor unduly cynical or suspicious.”

[114] As it relates to the instant case, Mr. Samuels was a member of the academic staff that is a teacher, and a member of the Board of the Merl Grove High School, of which the claimant was the principal. As such, concerning his professional duties, she is the person to whom he would report. He was also a member of the committee which conducted the disciplinary hearing. As such, it is within this context that his email correspondence has to be considered. The timing of the letter is also relevant. This letter, which was sent to the claimant on the 6<sup>th</sup> of September 2021, reads as follows:

*Good evening Dr. Fullerton,*

*I am in receipt of your email. After careful perusal, however, given its contents, it would be remiss of me not to retort.*

*Firstly, I am puzzled by the caption- a very condemnatory sentence- and yet to see the correlation between the caption and the content of the correspondence. Secondly, I am ultra-curious as to who the pronoun “us” refers to in the first sentence of your email. Before you even consider raising the point about my absence to those meetings (July 5-9, 2021), let me assure you that as a law-abiding citizen and on the grounds of self-preservation, I saw it necessary to adhere to the guidelines of the Disaster Risk Management Act, an umbrella under which the current education system operates. Nevertheless, I was duly informed by my esteemed colleagues on what transpired during those days. Of not, the action plan in relation to the school’s improvement plan (SIP), the deployment by the respective Heads of Department, Data Meeting and the Year Coordinators’ Reports for the 2020-2021 academic year were the only tasks that bore fruit from those meetings, if it is that you consider ‘glancing on the issue of timetabling’ and ‘changing the dates of a previous calendar of events to fit this academic year’ as reopening plans, you need to specify. In like manner, I have come to the realization that this current administration continues to carry a burden in differentiating between consultation and sensitization. Consultations require engagements and meaningful discussions with major stakeholders (teachers etc.) to arrive at the best possible decision that has been made. On the strength of this, I must commend you on the multitude of sensitization sessions hosted. However, optimal and effective operations require frequent consultations. Resultant, for the meetings held on July 5-9, 2021, no consultations was made to the Academic Staff with regards to the reopening of school. Irrefutably, no plans were made with ‘us’ regarding the reopening of school. Noticeably, I am extremely startled that you are informing the staff that you have returned to office when they were all unaware of the fact that you have demitted office. This is a repetition, as*

*it is the third attempt of you taking leave of absence without exercising due diligence and common courtesy. These actions are not only unacceptable and unethical but clearly paints a picture of neglect and irresponsibility.*

*For your reference, Mrs. Ricketts has always been in her substantive post as Vice-Principal. However, in the absence of the principal, by law, she assumes the role and responsibilities of the principal. Assumption of principal duties in your absence does not take her from her substantive post. Please consult The Education Act (The Code of Regulations 1980)- Schedule D, Regulation 44, section 3-1 and 2 for clarity purposes.*

*Additionally, it is unseemly unethical to give instruction to an employee or provide pertinent information, especially to one who has special responsibility, through the grapevine. This only contributes to a disorganized culture that will permeate havoc discord. I beg your pardon if this is an oversight but because of the frequency, it must not be overlooked. Vice Principal Ricketts was no copied no the said email. It is absolutely fine for you whether permanently or internally to agree to the resignations of teachers. However, as per The*

*Education Act (Code of Regulations 1980)- Section 89, it is the Board of Management that is charged with the responsibility of the process of recruitment, appointment and termination. Therefore, on the matter of it still standing that is null and void. On the matter of the school's zoom account, I concur with you that it is official school's property. Nonetheless, school resources do not belong and should not be manned only by the principal. Consequently, Vice Principal Ricketts and other senior teachers*

*are liable to access. To add, such a request for access to the account should first and foremost be addressed to the Board of Management, rather than to the respective persons.*

*Might I add, for you to dismiss all the plans and initiatives that have been derived by the Vice Principal with the consensus of the Academic Staff portrays a lack of confidence in the Board of Governors, and your staff. Moreover, it is also highlights a lack of interest in the well- being of our parents and students. Attributable to this, we are still in awe to know that you out rightly gave instruction to the system's administrators to disenfranchise the teachers, parents and students whilst completing the registration process and dismantled the homerooms. Furthermore, you have gone ahead without consultation of either Vice Principal and or the Academic staff to inform parents and teachers about changes that will be made. This affront should never reach in the public arena. At no point in time should we ever 'wash our linens' in public. These are basis principles and standards that every professional should be privy to.*

*Lastly, your diction to express all that have been out in place during your self-approved leave should be disregarded as boorish, contentious, insulting and unacceptable. Rather than this antagonistic approach, it would have been more prudent to consult with the Vice Principal then the general teaching staff at a mutually convenient time (after three days' orientation exercises) to better ascertain the plans to progress in an amicable and dignified manner. We can work together without any pretense of friendship. Professionalism and cordiality do not require disingenuous connections. Though we may have fallen in the past to your dominance and dictatorship, at this critical point in time, I say without fear or contradiction that we will not yield to your animosity, disdain and*

*contempt. We are resolute that we will not be working with you in an atmosphere predicated on chaos, disrespect and disorder. While we know that a utopic working environment might be a far-fetched dream, the dystopia that is the hallmark of your human resource interrelations, long gone unabated, will no longer be tolerated.*

*Respectfully yours,  
Gregon Samuels  
Academic Staff Representative*

**What are the facts on a balance of probabilities.**

[115] The undisputed facts are as outlined in the chronology of events. So I will here proceed to outline the additional facts as I have found them on a balance of probabilities. The claimant, Dr. Fullerton has not denied authorising large cash payments, and allowings cash collected for summer school to be collected by the summer school coordinator (that is, a teacher) instead of it being channelled through the bursar's office. She has also admitted, authorizing the collection of a nonrefundable sum of \$5000, for the transfer in the application forms. These she says, were authorised by previous Boards. There was a 20,000 contribution from the Canadian Chapter of the Past Students Association that was paid directly to a contractor for the construction of sheds at the school which was not paid through the bursar's office. The then president of the chapter indicates that the reason they had avoided doing business with the bursar's office was because previously they had paid sums into that office which they felt were not properly accounted for.

[116] The claimant was aware of the payment of this \$20,000 Jamaica Dollars. She explains that this was an individual who was approved by the Board to construct sheds at the school and that the payment was done on request as there was a delay on the part of the Board in paying this individual. Other irregularities she said were due to the failure of the bursar and the bursary staff who failed to be diligent in their duties. She indicated that she reported them to the previous Board but the Board took no action. There is in fact evidence of these reports in October 2019.

[117] She maintained that it was the Board's responsibility to ensure that the relevant updated signatures were placed on the school's bank accounts. Mr. Hall the then chairman did not deny that the Board shared some responsibility in this regard and that his signature was not on the accounts. Dr. Fullerton , denied that she did not respond to Board in relation to their request to provide a response to the financial review. She provided what she describes as a fulsome response in October 2021, after the commencement of the hearing. She stated that this late response was due to the failure of the bursar, Ms Lawrence to provide her with information that she requested that was necessary for her to respond to the review.

[118] In her response and action plan she stated that summer school, transfer in activity and collection of funds will continue ; that she will continue to seek approval from the Board and that she will continue to hold the bursar and staff accountable.

[119] The bursar, Ms. Lawrence indicated she had informed Dr. Fullerton that some of the cash transaction she requested her to do were in breach of the **Education and FAA Acts and Regulations** but she took the position that she was the principal so she should obey her directions. The bursar admitted that she had not provided the report within the timeframe stipulated by Ms, Fullerton, but indicated that she provided the information by February 24, 2021 , and that having done so she did not received any further feedback from Ms. Fullerton. Doctor Watson, the Financial Chair for period, indicated that to her knowledge, the Board during her tenure did not grant any approval for funds collected for summer school, or transfer in forms to be collected outside of bursar's office. Ms Ritchie in the financial review indicated that the last time she saw moneys for summer school reflected in the school's account was 2017. Up to 2021. Dr. Fullerton had been principal of the school for 5 years.

[120] The issue I must now consider is whether the fair-minded, informed, observer who is "neither unduly complacent, naïve nor unduly cynical or suspicious" having all the aforementioned facts and taking into consideration Mr. Samuels' email to Doctor Fullerton would conclude that he was biased. It is clear that he was

responding to an email from Doctor Fullerton, with regards to his absence from a teacher's meeting she had scheduled. While I agree with counsel for the defendants that Mr. Samuels in the correspondence in question did not specifically address the matters contained in the financial review, in my view it is would be too narrow an approach, to dismiss the issue of bias on this consideration only.

- [121] The charges, which in essence speak to, neglect in function, albeit in relation to the issue of non -adherence to established protocol for, lodgements, collection, and receipting of funds, inter alia, in effect relate to the claimant's effectiveness or lack thereof in discharging her duties as a principal. This letter was written with the knowledge of the pending charges and the knowledge that he was one of the persons who was selected to adjudicate upon the charges.
- [122] He, nevertheless, in this correspondence, did not limit his response to the reason for his absence but went further to reprimand her about her leave of absence, accusing her of antagonism and, lacking in common courtesy, describing her actions as being. unethical and neglectful. He criticized her approach to changes instituted by the vice principal in her absence as being *antagonistic*. In addition, he went on to express his personal views about her administrative capabilities. He made reference to her treatment of the resignation of teachers, accusing her of taking on the responsibility of the Board. He also commented on the manner in which she gave instructions to an employee, describing it as, "*through the grapevine*", which in his view was unethical, contributing to "*a disorganized culture*".
- [123] He further expressed the view that her administration was one of animosity, disdain, and contempt. In fact, his strong conviction regarding the failure of her administrative capabilities, in terms of human resource interrelations is displayed in the fact that he chose to describe it as a "dystopia". It is also of significance that Mr. Samuels did not keep this communication between himself and the principal, but copied it to other staff members, some of whom expressed support for his views.

**[124]** The contents of Mr. Samuels' correspondence would certainly display to the fair-minded informed observer, that he was commenting on the claimant's administrative capabilities. That as of September 6, 2026, that is prior to, but very close to the disciplinary hearing, Mr. Samuels had developed a negative perception of the claimant with regards to her administrative capabilities at the school. The tone of his letter would convey to such an observer, the appearance of contempt on the part of Mr. Samuels towards the claimant, that was bordering on insubordination

**[125]** The fair-minded informed observer would certainly hold the view that, in these circumstances, Mr. Samuels could not have been objective in the determination of the issues, relative to the charges which touch and concern her administrative capabilities, though in the area of finance, as also her attitude towards the Board. As between the evidence of the claimant and that of the bursar, Ms. Lawrence, Mr. Hall, the then chairman of the Board, or Doctor Watson, the then financial chairman, to the fair-minded informed observer, his prehearing perception of the claimant would have influenced him in preferring their evidence over hers rather than the exercise of an objective independent assessment of the evidence.

**[126]** I will now address the letter dated June 16, 2021, from the Associated Gospel Assemblies, referring to a denominational executive board meeting, addressed to the claimant and copied to Ms. Willie, Mr. Hall, and three other persons from the Ministry of Education. The letter is signed by the President, Rev Anthony Whyte, with the caption "*Re: Your leadership at the Merl Grove High School.*" I will not outline the entire content of the letter in the interest of time.

**[127]** Significantly, however, is the observation that this letter raised the issue of the financial review, as also other issues concerning Doctor Fullerton's leadership unrelated to the review. The writer expressed dissatisfaction with her leadership and expressed the view that her stance was disrespectful and "considered her lack of response an affront to the Board". In my view, standing alone, this would be insufficient to establish apparent bias in the eyes of the fair-minded informed

observer on the part of Ms. Willie. This is, considering the fact that, there is no indication that she responded or adopted these views prior to the hearing.

[128] Additionally, there is no indication that she was present, and participated in the executive board meeting at the Associate Gospel Assembly. In my view, viewing this letter without more, the fair-minded informed observer would not conclude that because a past chairman sends a letter expressing his view on a matter, that the receiver, who is part of the decision-making process, will be influenced by its content without exercising her own independent judgment.

[129] Nonetheless, I bear in mind that the attribute of the fair-minded informed observer is that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political, or geographical context. She is fair-minded, she will appreciate that the context forms an important part of the material which she must consider before passing judgment." (See the judgment of Lord Hope in the case of **Johnson v Johnson** (2000) 201 CLR,488).

[130] It is within this context that I take into consideration that in its report to the Board, the committee made reference to observing "snippets of her acrimony and disrespect," without establishing any evidential basis for this finding. This is against the background that none of the charges or allegations made reference to any disrespect on the part of Doctor Fullerton. She did not give via voice evidence so this perception could not be in reference to her demeanour. It begs the question whether these comments were influenced by considerations extraneous to the evidence they were required to assess.

[131] Consequently, when this letter, by Reverend Whyte is juxtaposed against the information that members of the committee, began to conduct; themselves as a party to the proceedings having a vested interest in the outcome; treat the witnesses as the witnesses of their own, in addition to making the aforementioned

comment, the fairminded informed observer would conclude that the letter signed by the past chairman did have some prejudicial effect on the mind of the chairman of the committee, Ms Willie.

[132] Regrettably, the Tribunal failed to demonstrate that they sufficiently addressed their minds to the foregoing factors in their consideration of the claimant's appeal. At paragraph 37 of their judgment they commented that:

*"Having regard to the amount of cash collected for various events in the school but not coming to the bursary and in relation to the way in which cash payments were being made the personnel committee was entitled to prefer the bursar's evidence. On this point, the principal did not dispute that she gave instructions to make large payments out of petty cash and that she also gave directive to make certain type of cash payments"*

[133] Further, at paragraph 55 of their decision they stated that:

*"We agree that the evidence obtained during the disciplinary hearing, as displayed by counsel, was sufficient to prove the charges against the appellant"*

[134] As already been expressed in these discussions, this court is not concerned with whether the decision of the committee, Board, or Tribunal is correct. It is concerned with whether the procedure in arriving at the decision is flawed (See the cases, **Alcoa Minerals of Jamaica v The Industrial Disputes Tribunal and Ors.** [2014] JMSC Civ 59 in **Chief Constable of the North Wales Police v Evans** [1982] 1 WLR 1155 of **C.D. v the Board of Management of a National School** [2019] IEHC 819.) In essence, as noted by the Tribunal, there may have been sufficient evidence before the committee, if found to be credible, that could have proven beyond a reasonable doubt, that the claimant is guilty of all the charges. However, if the process by which this determination was arrived at was prejudicial and unfair, there would be sufficient basis to quash the decision.

[135] In the instant case, Dr Fullerton in her statement and response to the financial review did say that the activities regarding the large payment of cash to the canteen manger was a Board-approved activity for the celebration of the school's 95<sup>th</sup> anniversary. She also stated that the use of co-ordinators for summer school

activities to include the collection of funds were approved by past Boards. In fact, with the exemption of the \$20,000 Jamaican dollars that was paid directly to the contractor, for all the other activities for which she acknowledged that the funds were not collected through the bursar's office she indicated that they were approved by past Boards. Ms Ritchie, on cross-examination had also indicated that she was not in a position to determine if this was so as she did not examine the minutes of the meetings of previous Boards and that her focus was on whether there was any breach of the Act.

**[136]** The evidence of Dr. Watson is that they were not approved by the Board of which she was a part. Doctor Fullerton's defence was that they were approved by Reverend Whyte. Quite significantly, it was also her defence that all payments in relation to these sums were signed by the Board, the chairman and herself as the principal. Mr. Whyte was not called as a witness to refute these claims. However, the committee did not appear to address its mind to this defence of Dr. Fullerton.

**[137]** Nonetheless, the Tribunal did not demonstrate that they took into consideration the failure of the committee to address its mind to the defence of Doctor Fullerton, that the Board to which she was answerable approved these financial activities, for which she was being held accountable. The Tribunal failed to consider whether this was due to bias on the part of the committee. The Tribunal itself appears to have focused on the evidence of Ms. Lawrence against that of Dr. Fullerton and failed to take into account (i) whether the defence that the activities were Board approved were true, and if true what impact it would have on the charges, in particular charges 1 to 4. That is; in certifying the findings of the committee the Board did not take these relevant factors into consideration.

**[138]** Additionally, in relation to charge 5, Ms. Ritchie admitted that the responsibility rests on the Board to ensure that the relevant signatures, were on the school's account. The complainant himself, Mr. Hall who was the then chairman admitted that the claimant alone could not have ensured that the relevant signatures were on the bank accounts. The undisputed fact was that he himself at the time of the

report had not placed his signature on the account despite the fact that it was a requirement for the chairman's signature to be on the account. Nonetheless, the Tribunal has not demonstrated the basis on which they upheld the finding of the committee that this charge was proven. In the **Grant** case at paragraphs 34 and 35, the Judicial Committee of the Privy Council had this to say:

*"It was incumbent on the Tribunal to set out its reasons in more detail, covering all the issues argued, so that the appellant might appreciate the grounds on which it based its decision and be in a position to mount a challenge to it if so advised. "The purpose of requiring reasons to be given by such tribunals is to enable parties to ascertain with sufficient clarity to allow the appellant to appreciate the grounds for their decision and bring his application for judicial review. The reasons given by the Teachers' Appeal Tribunal were succinct to the point of being skeletal and it is questionable whether they satisfied that criterion of sufficient reasons".*

[139] Regarding charge 6, the claimant's defence was that her delay in responding was due to Ms. Lawrence's failure to provide her with the necessary information within the time requested, but that she did, however, provide a response in writing on February 24, 2021. The committee clearly did not find this as a sufficient reason to absolve the claimant of this charge. However, while the committee has provided some details regarding their decision on sentencing the Tribunal has yet again failed to provide sufficient reason as to why they held that the Board's decision on sentence should stand. All they have said on this issue is that; *"The Board is well within its right to act on the recommendation of the personnel committee as it deems fit."*

[140] However, it was incumbent on the members of the Tribunal to engage with the material before them to decide whether they believed that the punishment suited the charges and to clearly express their reasons. This is in light of the fact that they had the power to vary the sentence, where it is not justified on the facts or was otherwise unfair. The reasons the committee has provided for the dismissal of the claimant are as follows.

*"The gravity and magnitude of the proven charges (1,2,3,4,5 and 6) aforementioned notations of fraudulent activities, highlighted in the financial review 2020 as well as, the additional evidence which suggests that there is no intent on Dr. Fullerton's part to embrace her role as 'the*

*Accountable Officer", her lack of willingness to change her modality of operation in keeping with established financial governance and legislative guidelines is unfortunate. This stance exposes the school to critical sanctions and decimates the reputational fabric of the school which was founded on the solid embodiment of Christian moral values and ethics. The recommendation in the Financial Review 2020, states, "A breach of this instruction resulting in a loss of public funds, shall cause the officer found culpable of the breach to be surcharged for the amount of the loss or part thereof as determined by the Board. (Therefore, the board should recover all funds collected in the name of the school and not lodged to the schools account, and person/s sanctioned.)" "We are in no way discounting the accomplishments that Dr. Fullerton has realized during her five-year tenure, and for that we applaud her. Notwithstanding, it would be imprudent, negligent and irresponsible of us to disregard the evidence and by extension the seriousness of her actions and inactions, **which by virtue of her responses, she is resolute in her divergence.** As indicated it is the responsibilities of the Board: "Ensure that adequate controls are in place to prevent the loss or misuse of Government funds and assets". We propose disciplinary action be levied in keeping with the dictates of The Education Act, The Education Regulations, 1980, 57 (5) (b) (iv), "that his appointment as a teacher with that public educational institution be terminated". In keeping with said regulation, we recommend that these services of Dr. Marjorie Fullerton be terminated with immediate effect."*

[141] However, from the perspective of the fair-minded informed observer, there is enough to conclude that the sentence was influenced by the bias and or prejudice of the members of the committee and that another committee even if she was found guilty of the charges would have arrived at a different conclusion regarding sentence. As it relates to "the notation of fraudulent activities". in their report the committee, commented that the bursar has never been reported to the board for fraud. Yet before the committee there was admission by Ms. Lawrence that she was aware that she was reported to the Board by the claimant. There is also evidence of a letter to the then chairman Mr, Whyte reporting Ms. Lawrence for "false information and "inconsistences". Only an investigation, in my view could have revealed if these activities amounted to fraud.

[142] The committee's finding of "*a lack of willingness to change her modality of operation in keeping with established financial governance and legislative, guidelines*" does not appear to take into consideration her evidence through her response and action plan to the financial review that (i) *If any legal conclusion can be considered accurate she agrees with the recommendation* (ii) *She will put in*

*more stringent measures to hold the bursary accountable (iii) Suppliers who do not accept school's cheque would not be used and where goods and services are not available from those suppliers who accept government cheques other plans will be made after advisement from the Board (iv) Duties will be completed in accordance with Ministry standard (v) The activity regarding the payment for transcript (\$200,) to principal and secretary which she said was Board approved and predates her assuming office as principal, after investigation she had discussions with the then chairman and that activity was discontinued in 2020. (vi) She will continue to seek the Board's approval on all activities (vii) She is requesting a meeting with the Ministry of Education, the Board and the National Council of Education to address the role of the Board and the principal".*

**[143]** In her Action Plan Doctor Fullerton, did say certain activities would continue. However, those activities were those that she said were Board approved. As such, a fair and objective determination of her response, by a fair-minded informed observer could be that there was a willingness on her part to only undertake Board-approved activities and not a “resolute *divergence*” as it is termed by the committee.

**[144]** Additionally, what the committee describes as “*excuses*” and “*blame shaming*” in its report, another committee which is not tainted with bias could view as an attempt at providing plausible explanation for the alleged breaches. All these the members of the Tribunal have not demonstrated that they took into consideration.

## **Conclusion**

**[145]** I reiterate that it is not my responsibility in a judicial review to determine the correctness of the decision. Nonetheless, while there may very well be evidence, if found to be credible, to support a finding of guilt on each and every charge, if the procedure in arriving at the decision is illegal or unfair, it cannot stand. In light of the fact that I have found that the material before me reflects that the committee

treated the matter as they against the claimant, the Board against the claimant and not Mr. Hall the chairman of the Board against the claimant, it was not possible for the claimant to receive a fair hearing in these circumstances. She was placed in the position of having to defend herself against her adjudicators. Where there were variances between the evidence of the claimant or her witnesses and “their witnesses” the committee would most certainly, in those circumstances have accepted the evidence of their witnesses over those of the claimant.

**[146]** Additionally, there was apparent bias found in two members of the committee who presided over the disciplinary hearing of the claimant. However, the Tribunal did not demonstrate that they sufficiently engaged with the material before them, regarding the prejudice, unfairness and bias of the committee. They did not take into consideration the clear evidence of partiality and bias, on the part of the committee and the impact on their findings in relation to charges, decision and sanction. As such, I find the decision of the Tribunal to be irrational and one that cannot stand.

**[147]** Consequently, I make the following Orders.

- (i) It is hereby declared that the claimant’s right to a fair hearing, guaranteed by section 16 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 and a common law, was breached by the 1<sup>st</sup> defendant, inclusive of the personnel committee of the 1<sup>st</sup> defendant and that the decision of the 2<sup>nd</sup> defendant to uphold the decision of the 1<sup>st</sup> defendant is irrational.
- (ii) An order of certiorari is granted to quash the decision of the 1<sup>st</sup> defendant to terminate the employment of the claimant as the principal for the Merl Grove High School.
- (iii) An order of certiorari is granted to quash the decision of the 2<sup>nd</sup> defendant to dismiss the appeal brought by the claimant against the decision of the 1<sup>st</sup> defendant to terminate the employment of the claimant

- (iv) An order of prohibition is granted against the 1<sup>st</sup> and 3<sup>rd</sup> defendants to prevent the appointment of any other person apart from the claimant to the post of principal at the Merl Grove High School
- (v) An order of mandamus is granted compelling the 1<sup>st</sup> defendant to return the claimant to her substantive post as principal for the Merl Grove High School to perform her duties.

**Damages**

- (1) The Claimant is to be paid all outstanding wages and allowance that she would have been entitled to from the date of termination
- (2) Cost to the Claimant to be agreed or taxed.

.....  
**Andrea Thomas**  
**Puisne Judge**