

**Angela Inniss**

*Appellant*

v.

**Attorney General of Saint Christopher and Nevis**

*Respondent*

FROM

**THE COURT OF APPEAL OF  
SAINT CHRISTOPHER AND NEVIS**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 30<sup>th</sup> July 2008

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*Present at the hearing:-*

Lord Hope of Craighead  
Lord Scott of Foscote  
Lord Walker of Gestingthorpe  
Lord Mance  
Lord Neuberger of Abbotsbury

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*[Delivered by Lord Hope of Craighead]*

1. The appellant is a barrister and solicitor of the High Court of the Federation of St Christopher and Nevis. She was admitted to practice on 31 October 1988. From 1 November 1988 to 31 May 1996 she was the junior partner in a private law firm in partnership with her father, Sir Probyn Ellsworth Inniss, a former Governor-General of the Federation. In June 1996 she decided to enter the public service as Registrar of the High Court. This is an office to which section 83 of the Constitution of St Christopher and Nevis applies, as it does to the office of magistrate and to any public office in the departments of the

Attorney-General and the Director of Public Prosecutions. Section 83(2) provides:

“The power to appoint such persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Governor-General, acting in accordance with the recommendation of the Public Services Commission:

Provided that before making any recommendation as to the exercise of the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission.”

2. The appellant was appointed to the offices of Registrar of the High Court and of Additional Magistrate for Districts A, B and C on the recommendation of the Public Service Commission after consultation with the Judicial and Legal Services Commission. On 18 June 1996 she entered into a contract with the Governor-General acting on behalf of the Government of St Christopher and Nevis to serve in that capacity for a period of two years, commencing on 1 June 1996. Thereafter the appellant entered upon her duties as Registrar of the High Court and she performed the duties of an additional magistrate when necessary. As she was to explain later in an affidavit, she decided to accept the post of Registrar in the belief that exposure to the public service in this post would make her a more eligible candidate for appointment as a member of the judiciary.
3. Clause 2 of the appellant’s contract provided that she was to conform to the general or standing orders for the civil service for the time being in force in so far as they were applicable. Clause 3 provided that her salary would be paid from 1 June 1996. Clause 4 provided that on the satisfactory completion of her term of engagement she was to be entitled to a gratuity equivalent to 20% of her salary during the period of her appointment. Clause 8(1) provided that the Government might at any time determine her engagement on giving her three months notice in writing or on paying her one month’s salary. Clause 12 provided that on 1 March 1998 she was to give notice in writing to the Government whether she wished to remain in employment, and that the Government was thereupon to decide whether it would offer further employment.
4. On 20 February 1998, after one year and a little less than nine months from its commencement, the Permanent Secretary of the Establishment Division on behalf of the Government wrote to the

appellant purporting to terminate her contract. His letter was in these terms:

“In accordance with clause 8(1) of your employment contract between His Excellency the Governor-General and yourself, and dated the 18<sup>th</sup> day of June 1996, the Government decided to ‘determine your engagement’ as Registrar of the Supreme Court (sic) and Additional Magistrate with immediate effect.

You will be paid one month’s salary in lieu of notice in keeping with the terms of your contract and your gratuity will be pro rated to reflect the period of your employment.

On behalf of the Government and people of St Christopher and Nevis, I take this opportunity to thank you for your service to the Federation and wish you every success in your future endeavours.”

No mention was made in the letter of any recommendation by the Judicial and Legal Services Commission that the appellant’s contract should be terminated before the expiry of its term of two years. It is common ground that there was no such recommendation.

5. On 5 March 1998 the appellant wrote to the respondent, the Attorney-General of St Christopher and Nevis, drawing his attention to section 83(3) of the Constitution. This subsection provides:

“The power to exercise disciplinary control over persons holding or acting in offices to which this section applies and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission:

Provided that before making any recommendation as to the exercise of the powers conferred by this subsection in any case the Judicial and Legal Service Commission shall consult the Public Service Commission.”

She pointed out that the method of her removal from office was covered by that subsection, that the power to terminate her employment as

Registrar and Additional Magistrate under clause 8(1) of her contract could not be invoked unless the provisions of section 83 of the Constitution were observed and that her dismissal without observing those provisions was wrongful. She said that she intended to institute legal proceedings against the Government of the Federation for wrongful dismissal and for damages for loss of reputation and consequential damage to her professional status and employment opportunities.

6. Section 96 of the Constitution provides that any person who alleges that any of its provisions other than a provision of Chapter II (Protection of Fundamental Rights and Freedoms) has been or is being contravened may, if he has a relevant interest, apply for a declaration and relief under that section. Subsection (5) provides that a person shall be regarded as having a relevant interest for the purpose of an application under that section only if the contravention of the Constitution affects his interests. Subsection (3) provides:

“(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.”

Subsection (6) provides that the rights conferred on a person by that section to apply for a declaration and relief shall be in addition to any other action in respect of the same matter that may be available to that person under any law.

7. On 20 July 1998 the appellant commenced proceedings against the respondent by way of a constitutional motion in the High Court. She sought a declaration that the letter of 20 February 1998 which purported to remove her from her office as Registrar was null and void as it was in contravention of section 83(3) of the Constitution. Among other orders she sought an award of damages for breach of her constitutional rights including exemplary damages.

*The judgments below*

8. On 21 February 2000 Moore J rejected the respondent’s argument that the government determined the appellant’s appointment in the exercise of a power that it had under the contract. He held that the appellant’s constitutional rights had been breached.

9. The judge described the appellant in his judgment as a young woman of deep feelings and strong convictions. He said that she had approached her appointments as Registrar and Additional Magistrate with the utmost seriousness, with an iron determination to stand upon principle, come what may. The principle of the independence of the judiciary and its officers from executive interference or executive control was one of the principles which she held sacred, and she vigorously resisted any conduct by any member of the Executive which she judged to be in violation of that principle. This had led to strained relations between herself, senior civil servants and even a senior member of the judiciary. Having examined the evidence, he said that he had absolutely no doubt that the letter was the result of a desire on the part of the Executive to rid itself of, as he put it, “this ‘turbulent’ Registrar”. The framers of the Constitution evidently considered that the holders of the offices specified in section 83 provided a service of such importance to the public that there should be a mechanism for their removal which lay outside the control of the Executive. But it was clear that the procedures under section 83(3), which would involve the appellant being heard, were too time-consuming for the Executive as their wish was that the respondent should be dispatched quickly. He declared that the letter of 20 February 1998 was a contravention of section 83(3) of the Constitution and that it was calculated to affect, and did affect, the interests of the appellant. He ordered the respondent to pay the appellant damages for breach of her constitutional rights in the sum of EC\$100,000, which he said was an award of general damages including an element of exemplary damages.
10. On 14 January 2002 the Court of Appeal of the Eastern Caribbean Supreme Court (Redhead JA, Archibald JA (Ag) and Bruce-Lyle JA (Ag)) allowed an appeal by the respondent from Moore J’s judgment. It held that there had been no breach of the appellant’s constitutional rights. Redhead JA said that the trial judge had elevated registrars, magistrates and Crown Counsel in the office of the Attorney-General and the Department of the Director of Public Prosecutions to the status of Director of Public Prosecutions and judges. He referred to *Hinds v The Queen* [1977] AC 195, in which Lord Diplock said that under the Constitution of Jamaica the higher judiciary were given a greater degree of security of tenure than the lower judiciary, and that there was nothing in its Constitution to protect the lower judiciary against Parliament providing that their appointment to judicial office should be only for a short fixed term of years. He said that there was no breach of any constitutional right in this case. What it involved was simply an admitted breach of contract. Archibald JA (Ag) and Bruce-Lyle JA (Ag) agreed that there was no constitutional violation. The

judge's award of damages was set aside and the appellant found entitled to damages for breach of contract in the sum of EC\$19,351.20. She now appeals against that judgment to their Lordships' Board.

11. On 6 May 2008 the Board delivered its judgment in *Horace Fraser v Judicial and Legal Services Commission and the Attorney-General* [2008] UKPC 25. The appellant in that case had served under successive annual contracts as a magistrate in St Lucia. He was dismissed from his office by a letter from the Permanent Secretary of the Ministry of Public Service on the recommendation of the Judicial and Legal Services Commission after allegations of improper conduct. The Commission admitted that it did not comply with its code for disciplinary proceedings when, without any inquiry into the question whether Mr Fraser had misconducted himself, it advised the Ministry that his contract should be terminated. But it maintained that his employment as a magistrate could be terminated summarily by invoking a clause to that effect in his contract. In support of this view it relied before the Board on the decision of the Court of Appeal in this case. It was said to show that there was nothing to prevent the exercise of the contractual right, even though this was done without reference to the protection that the Constitution gave against removal by the Executive.
12. The Board held in *Fraser* that provisions in his contract fell within the constitutional protection, and the decision of the Court of Appeal in that case was set aside. But Lord Mance also said in para 14 of his judgment that the Board had no doubt that the present case too was wrongly decided. Very properly, the respondent has conceded that he cannot now support the decision of the Court of Appeal that there was no breach of the appellant's constitutional right in this case. In the result the only issues that remain between the parties relate to the question of damages.

*The issues*

13. There are two elements that must be considered in the computation of the total sum to be awarded as damages. The first is the appellant's claim under the contract. The effect of the section 83(3) of the Constitution is that the Executive had no power, without a recommendation by the Judicial and Legal Services Commission to that effect, to terminate the appellant's employment as Registrar prior to the expiry of her contract. So she is entitled to damages for its premature termination. That award is to be measured by the sum which she would have received if she had continued in her employment to the date when the contract was due to expire and all

sums due to her under it had been paid. The second element is her claim for damages for contravention of the constitutional right.

14. Mr Charkham for the respondent said that at the heart of the appeal there lay an issue of principle. There had been no breach of the appellant's fundamental rights under Chapter II of the Constitution. Her claim for constitutional relief under section 96(3) would be sufficiently met by a declaration that her right under section 83(3) had been breached. If damages were to be awarded, they should be confined to what was appropriate by way of vindication of that right. Exemplary damages, which the trial judge included as an element in his award, were inappropriate. So the sum which the judge had arrived at should not be taken as reliable guide to the level of award that was appropriate.

15. When Moore J awarded the appellant the sum of EC\$100,000 he described it as an award of general damages including an element of exemplary damages. He did not explain how he had arrived at this figure or say what part of it, if any, was to be attributable to her claim for breach of contract. In her supplemental affidavit the appellant had submitted that the total payment due to her under the contract was \$53,128.40 exclusive of social security contributions payable on her gross salary. But the judge made no comment on this part of her case. This was unfortunate, as it is unclear to what extent, if at all, his figure of \$100,000 took account of her computation of the sum that she said was due to her under the contract. It is also unclear what part the element of exemplary damages played in the total award.

16. Judges who award damages at first instance should bear in mind that their awards are open to appeal and that an appeal court will be at a disadvantage in reviewing the award if the basis for it is not explained. A breakdown of the various elements that make up the total sum awarded should always be given so that it can be examined, if necessary, on appeal. As the assistance that ought to have been given is lacking in this case their Lordships must make their own assessment of the sums due to the appellant for each element of her claim.

#### *Contractual damages*

17. In the Court of Appeal Redhead JA said that the award made by the trial judge should be set aside. This was because he rejected the argument that the appellant's constitutional right had been breached. He held that the only remedy that was available was for breach of the contract. He preferred the respondent's calculation of the sum due to that set out in a supplemental affidavit by the appellant. He held that

the sum due under her contract for the three months that remained from the end of February 1998 amounted to \$19,351.20. He proposed that judgment be entered in her favour for that sum, which he said was calculated on the basis of three months' salary less contributions which she would have made. Archibald JA said that he would have varied the award of the trial judge downwards to compensatory damages for breach of the contract, which counsel for the Attorney-General had proposed should be fixed at \$65,000. Bruce-Lyle JA agreed with Redwood JA that the award should be restricted to \$19,351.20 as this was what the appellant would have earned had she completed her contract.

18. It is plain from calculations that were shown to their Lordships by the appellant's junior counsel Mr Byron, which were not seriously challenged by Mr Charkham for the respondent, that the figure which the Court of Appeal arrived at was defective. Mr Byron identified five errors in the calculation that Redhead JA adopted. He had taken too short a period; he wrongly deducted social security benefits which, as they were contributory, ought to have been credited; he excluded sums due for unpaid leave; he excluded the gratuity to which she was entitled under clause 4 of the contract; and he had left out of account sums due to the appellant in 1996 and 1997 for short payment of her salary. Mr Byron admitted that the figure of \$53,128.40 in her supplemental affidavit was also wrong because it included \$2,103.00 for an amount owed for short payment of salary for 1998. That amount ought to have been left out of account in view of the way the overall award of salary due for the relevant months of that year was calculated.
19. The figures identified by Mr Byron show, after the correction which he admitted had to be made to them, that the total sum due to the appellant by way of contractual damages is \$51,025.40. Mr Charkham did not seek to support the calculation on which Redhead JA based his award. Their Lordships think that he was right not to do so, as it was clearly inadequate. Several elements to which the appellant is undoubtedly entitled such as the gratuity were omitted from it. A calculation was prepared on the respondent's behalf which produces a total of \$40,836.69, but Mr Charkham did not seek to justify the differences between it and the appellant's calculation. Mr Hudson-Phillips QC for the appellant indicated that he would be content with a lump sum award for the total amount due to the appellant as damages. Adopting this approach, their Lordships assess the contractual element in the award at \$50,000.

*Constitutional relief*

20. The respondent accepts that the threshold requirements for relief under section 96 of the Constitution are met in this case. As already noted, subsection (5) provides that a person shall be regarded as having a relevant interest for the purpose of an application under that section only if the contravention of the Constitution affects his interests. The trial judge held that the contravention of section 83(3) was calculated to and did affect the appellant's interests. He could hardly have done otherwise, as the effect of the contravention was to deprive her of protection against interference with her contract by the Executive. She was deprived of the opportunity to satisfy the Judicial and Legal Services Commission that there were no grounds for the premature termination of her contract. In these circumstances it was open to the High Court to grant her such remedy by way of damages as it thought appropriate in addition to the remedy in damages for breach of the contract.
21. The first issue to which Mr Charkham directed the Boards' attention was whether an award of damages would be appropriate at all in this case. The question that this submission gives rise to is whether a declaration that there has been a contravention of section 83(3) would be sufficient relief for the appellant in the circumstances. The function that the granting of relief is intended to serve is to vindicate the constitutional right. In some cases a declaration on its own may achieve all that is needed to vindicate the right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief. But in this case the contravention was, as the judge said, calculated to affect the appellant's interests and it did so. On the judge's findings it was a deliberate act in violation of the Constitution to achieve what the time consuming procedures of the Commission could not achieve. He rejected the submission that it was an innocuous administrative act. The desire was to get rid of the appellant quickly, and the contract proved to be an expedient vehicle for achieving this.
22. In *Attorney General of Trinidad and Tobago v Ramanoop* [2006] 1 AC 328, para 25, Lord Nicholls of Birkenhead said that where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. In general there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. In this case there is a parallel remedy, because an award for breach of the contract can be and is being made. But the only effective way of ensuring that such a flagrant breach of the Constitution is vindicated is by making an order for the payment of damages for the breach. As Lord Nicholls

observed in para 18, a declaration will articulate the fact of the violation but in most cases more will be required than words. This is such a case.

23. This brings into focus the second issue raised by Mr Charkham. On what principles is the court to assess damages as constitutional relief? He submitted that this case was far removed from those where there had been a contravention of one of the rights and freedoms guaranteed by Chapter II of the Constitution. In cases of that kind, of which false imprisonment or abuse by the police was given as example, it might be appropriate for a substantial award to be made to mark the sense of public outrage. In a case of this kind however a modest award only, at most, would be appropriate in addition to the claim for breach of the contract. Vindication of the right should be the criterion, not punishment which was inherent in the concept of exemplary damages.
24. The principles on which damages for breaches of constitutional rights are to be assessed are not greatly developed, as Elias CJ pointed out in *Taunoa and others v Attorney General* [2007] 5 LRC 680, para 108. But sufficient guidance is available from judgments that the Board has given, and their Lordships have been assisted also by observations by the judges of the New Zealand Supreme Court in *Taunoa*.
25. In *Attorney General of Trinidad and Tobago v Ramanoop*, para 18, Lord Nicholls said that when exercising its constitutional jurisdiction the court is concerned to uphold, or to vindicate, the constitutional right. In para 19 he referred to the word “redress” in section 14(1) of the Constitution of Trinidad and Tobago. The same word is used in section 18(1) of the Constitution of St Christopher and Nevis to describe the relief that may be given for a contravention of any of the fundamental rights or freedoms in chapter II. He said that it was apt to encompass an award to reflect the sense of public outrage, emphasise the gravity of the breach and deter further breaches. Although such an award was likely in financial terms to cover much the same ground as an award by way of punishment in the sense of retribution, punishment in that sense was not its object. The expressions “punitive damages” or “exemplary damages” were best avoided. In *Merson v Cartwright and another* [2005] UKPC 38, [2006] 3 LRC 264, para 18, Lord Scott of Foscote said that the purpose of a vindicatory award was not to teach the Executive not to misbehave. Its purpose was to vindicate the right of the complainant to carry on his or her life free from unjustified Executive interference, mistreatment or oppression. He added that the sum appropriate to be awarded to achieve this

purpose will depend on the nature of the particular infringement and the circumstances relating to that infringement.

26. In *Taunoa and others v Attorney General* the Court referred to these decisions and to cases from other jurisdictions when it was considering the approach that should be taken to an award of damages for a breach of the New Zealand Bill of Rights Act 1990. Elias CJ said in para 108 that where, as in the present case, remedies for other wrongs arising out of the same facts are provided, they may need to be taken into account in considering what is required for an effective remedy of the independent Bill of Rights Act violation. But it was not appropriate to take from this circumstance that the availability of damages for breach of the right was a residual remedy. In para 109 she said that it should be limited to what is adequate to mark an additional wrong in the breach and, where appropriate, to deter future breaches. But where a plaintiff had suffered injury through denial of a right, he was entitled to compensation for that injury, which might include distress and injured feelings as well as physical damage. Blanchard J said in para 258 that the court should not proceed on the basis of any equivalence with the quantum of awards in tort. The sum chosen must be enough to provide an incentive to the defendant and other state agencies not to repeat the infringing conduct and also to ensure that the plaintiff does not reasonably feel that the award is trivialising of the breach. Tipping J said in para 317 that the general tenor of the cases gave at least presentational priority to vindication as opposed to compensation. In para 319 he said that considerable care was needed in regard to deterrence as an aspect of the award, and in para 321 he said that he would require considerable persuasion that punishment could ever be an appropriate ingredient.

27. This case is not, as Mr Charkham pointed out, one where a fundamental right or freedom protected by the Constitution has been breached, and the word “redress” does not appear in section 96 of the Constitution. The word that section 96(1) uses is “relief”. *Ramanoop* was a case of unlawful arrest and detention. In *Merson* the appellant had been verbally and physically abused after arrest by police officers. In *Taunoa* the appellants had been subjected to segregation, isolation and frequent strip searches during their detention. But the fact that the guidance that was offered in those cases was given in that context does not deprive it of its value in case such as this, where the provision that has been breached is to be found elsewhere in the Constitution. Allowance must of course be made for the importance of the right and the gravity of the breach in the assessment of any award. The fundamental points are of general application, however. The purpose of the award, whether it is made to redress the contravention or as

relief, is to vindicate the right. It is not to punish the Executive. But vindication involves an assertion that the right is a valuable one, as to whose enforcement the complainant herself has an interest. Any award of damages for its contravention is bound, to some extent at least, to act as a deterrent against further breaches. The fact that it may be expected to do so is something to which it is proper to have regard.

28. Applying those principles to this case, the Board is satisfied that a relatively substantial award is justified. No reliable guidance can be obtained from the award made by the trial judge, due to the absence of an explanation for it and his use of the expression “exemplary damages”. Archibald JA (Ag) was prepared to accept the amount of \$65,000 which the respondent’s counsel had proposed as appropriate by way of an award of compensatory damages. But this figure too is not a reliable guide, as it did not separate out the constitutional element from the contractual award. In *Horace Fraser v Judicial and Legal Services Commission and the Attorney-General* the trial judge awarded \$10,000 for distress and inconvenience caused by the breach of the constitutional right, and the Board saw no reason to disturb that award. But the breach in that case was due to an error by the Commission in failing to follow its own procedures, whereas in this case the Executive chose to ignore the constitutional right because it was an obstacle to the appellant’s removal from her post quickly. Its act struck at the very heart of the protection to which the appellant was entitled under section 83(3). This was a breach of a substantially higher order than that with which the court was concerned in *Fraser*. There is much more to this case than the element of distress and inconvenience that the award was directed to in that case. The summary nature of the dismissal, for which no reason was given, must have been acutely distressing in itself. There was a risk that this would have an adverse effect on the appellant’s future employment prospects. And the Executive must be deterred from resorting to similar breaches in the future to further its own interests. Adequate vindication of the appellant’s constitutional right is especially important in such circumstances.

29. Taking all these factors into account their Lordships are of the opinion that an appropriate award for the contravention of section 83(3) of the Constitution would be \$50,000. In the result their assessment of the total award is the same, although for reasons that he did not set out in his judgment, as that which was arrived at by the trial judge.

*Conclusion*

30. Their Lordships will humbly advise Her Majesty that the appeal should be allowed, that the order of the Court of Appeal of the Eastern Caribbean Supreme Court of 14 January 2002 should be set aside and that the orders and declarations by Moore J on 21 February 2000 should be restored. The parties will have 28 days to submit any representations as to the costs of the appeal.