IN THE SUPREME COURT OF GRENADA

AND THE WEST INDIES ASSOCIATED STATES

HIGH COURT OF JUSTICE

GRENADA

CLAIM NO. GDAHCV2012/0021

In the Matter of the Coroners Act, Cap. 69. 1990 Revised Laws of Grenada, Section 10 (1) (b), imposing a duty on a Coroner to inquire into, and if necessary, hold an inquest, into every sudden death on reasonable cause to suspect that such death was occasioned by violence.

And

In the Matter of the sudden death of Peter Oscar Bartholomew, deceased, on 27 December, 2011 at the General Hospital, St. George's, Grenada to where he was taken from the St. David's Police Station, Petite Esperance, St. David's, on 26 December 2011 or thereabouts.

And

In the Matter of the Commissioner of Police of the Royal Grenada Police Force ('the Force) laying against Roddy Felix, a member of the Force among certain other members of the Force, a charge of the offence of Manslaughter to the said Peter Oscar Bartholomew, deceased, by unlawful harm, contrary to section 232, Criminal Code, Cap. 1, Vol. 1, 1994 Revised Laws of Grenada.

And

In the matter of the Magistrate of the Eastern Magisterial District, St. David's, proceeding from 6 January 2012 to hold a preliminary inquiry into the said charge of Manslaughter without a Coroner's Inquiry and inquest being held into the said sudden death of Peter Oscar Bartholomew, deceased.

And

In the matter of the said Roddy Felix, pursuant to Part 56 of the Civil Procedure Rules 2000, claiming an Administrative Order for judicial review for Certiorari to quash the said charge of Manslaughter and Prohibition to prohibit the said Magistrate from proceeding with the said preliminary inquiry in the absence of a Coroner's Inquiry and inquest aforesaid.

BETWEEN

RODDY FELIX

CLAIMANT

AND

1. THE MAGISTRATE, EASTERN MAGISTERIAL DISTRICT, ST. DAVID

2. THE COMMISSIONER OF POLICE

DEFENDANTS

IN THE SUPREME COURT OF GRENADA

AND THE WEST INDIES ASSOCIATED STATES

HIGH COURT OF JUSTICE

(CIVIL)

GRENADA

CLAIM NO. GDAHCV2012/0022

In the Matter of the Coroners Act, Cap. 69, 1990 Revised Laws of Grenada, Sections 9(2) and 10 (1) (b), imposing a duty on a Coroner to inquire into, and if necessary, hold an inquest, into, respectively the death of any person confined in a place of lawful detention or every sudden death, on reasonable cause to suspect that such death was occasioned by violence

And

In the Matter of the sudden death of Peter Oscar Bartholomew, deceased, on 27 December, 2011 at the General Hospital, St. George's Grenada to where he was taken from the St. David's Police Station, Petite Esperance, St. David's on 26 December, 2011 or thereabouts

And

In the Matter of the Commissioner of Police of the Royal Grenada Police Force ('the Force) laying against Edward Gibson, a member of the Force among certain other members of the Force, a charge for the offence of Manslaughter to the said Peter Oscar Bartholomew, deceased, by unlawful harm, contrary to Section 232, Criminal Code, Cap. 1, Vol. 1, 1994 Revised Laws of Grenada; and suspending Gibson pending completion of the hearing of the said charge

And

In the matter of the Magistrate of the Eastern Magisterial District, St. David's, proceeding from 6 January 2012 to hold a preliminary inquiry into the said charge of Manslaughter without a Coroner's inquiry and inquest being held into the said sudden death of Peter Oscar Bartholomew, deceased.

And

In the matter of the said Edward Gibson, pursuant to Part 56 of the Civil Procedure Rules 2000, claiming an administrative order for judicial review for Certiorari to quash the said charge of Manslaughter and prohibition to prohibit the said Magistrate from proceeding with the said preliminary inquiry, in the absence of a Coroner's Inquiry and inquest aforesaid.

BETWEEN

EDWARD GIBSON

CLAIMANT

AND

1. THE MAGISTRATE, EASTERN MAGISTERIAL DISTRICT, ST. DAVID

2. THE COMMISSIONER OF POLICE

DEFENDANTS

IN THE SUPREME COURT OF GRENADA

AND THE WEST INDIES ASSOCIATED STATES

HIGH COURT OF JUSTICE

GRENADA

CLAIM NO. GDAHCV2012/0037

In the matter of a Claim by the Claimants applying for an administrative order pursuant to Part 56 of the Civil Procedure Rules 2000

And

In the Matter of the Coroners Act, Cap. 69, of the 1990 Revised Laws of Grenada

And

In the Matter of the Magistrate and Coroner of the Eastern Magisterial District, St. David's refusing or neglecting to inquire into the death of the said Peter Oscar Bartholomew and to hold an inquest into the death of the said Peter Oscar Bartholomew

And

In the Matter of the charge for the offence of Manslaughter in the death of Peter Oscar Bartholomew by unlawful harm at the St. David's Police Station, Petite Esperance, St. David's, contrary to Section

232, Criminal Code, Cap.1, Vol. 1, 1994 Revised Laws of Grenada being laid in the name of the Commissioner of of Police of the Force against the Claimants, members of the Royal Grenada Police Force ('The Force"), and the suspension of the Claimants by the Commissioner of Police pending completion of the hearing of the said charge

And

In the matter of the decision by the Director of Public Prosecutions instituting or causing to be instituted, continuing or failing or refusing to discontinue proceedings against the Claimants for the offence of Manslaughter to Peter Oscar Bartholomew by unlawful harm contrary to Section 232, Criminal Code, Cap. 1, Vol. 1, 1994 Revised Laws of Grenada.

BETWEEN

P.C. #675 SHAWN GANNESS

R.C. WENDELL SYLVESTER

P.C. #748 KENTON HAZZARD

CLAIMANTS

AND

1. THE MAGISTRATE, EASTERN MAGISTERIAL DISTRICT, ST. DAVID

2. THE COMMISSIONER OF POLICE

3. THE DIRECTOR OF PUBLIC PROSECUTIONS

DEFENDANTS

Appearances: Dr. Francis Alexis, QC for the Claimant Edward Gibson

Mr. Anselm B. Clouden for the Claimants Roddy Felix

Mr. Cajeton Hood for the Claimants Shawn Ganness, Wendell Sylvester and Kenton Hazzard

Mr. Darshan Ramdhani, Solicitor General and Ms. Kinna Marast-Victor for the First and Second Defendants.

Mr. Christopher Nelson, Director of Public Prosecutions in person

2012: October 8, 9, 10

2013: March 15

JUDGMENT

[1] **Rhudd, J (Ag).** These are three sets of claims for Administrative Orders for Judicial Review of certain decisions made by the Defendants. For convenience, the matters were heard together as they all arose from the same series of events and essentially involved the same parties.

[2] In Claims Number GDAHCV2012/0021 and GDAHCV2012/0022 (hereinafter referred to as "the Felix Claim" and "the Gibson Claim", respectively), by way of Fixed Date Claim Forms, the Claimants seek, *inter alia* the following reliefs –

1. Administrative orders for Judicial Review of certain decisions made by the Defendants and for orders of certiorari to quash as being *ultra vires*, null and void, invalid and of no effect in law, the decision of the Second Defendant, the Commissioner of Police, by which the Commissioner laid charges for the offence of Manslaughter in the sudden death of Peter Oscar Bartholomew by unlawful harm, contrary to Section 232, Criminal Code, Cap. 1, Vol. 1 of the 1994 Revised Laws of Grenada and suspended the Claimants with half-month's pay.

2. Administrative orders for prohibition to prohibit the First Defendant, the Magistrate, Eastern Magisterial District, St. David's Magistrate's Court, Petite Esperance, from proceeding with holding a preliminary inquiry in the charges as laid without the Magistrate, *ex officio* Coroner for her District, and in compliance with the provisions of the Coroners Act, Cap. 69 of the 1990 Revised Laws of Grenada, inquiring into the cause of the said sudden death of the deceased and, on there being reasonable cause to suspect that such death occurred by violence, holding an inquest into the said death;

2. An order that provisions be made as to Costs; and

3. Such further and other relief as the Court deems fit.

[3]. In Claim No. GDAHCV2012/0037 (hereinafter referred to as "the Ganness Claim"), the three Claimants seek, *inter alia*, administrative orders for Judicial Review along the lines of those sought in both the Felix and Gibson Claims. Additionally, they seek the following declarations and orders:

a. An interim declaration that the decision of the Commissioner to suspend the Claimants from duty on half month's pay with effect from December 30, 2011 pending the completion of the hearing is premature, unreasonable, irrational and contrary to law.

b. An interim order that the Claimants be reinstated to full pay forthwith and that all outstanding short payments effected from December 30, 2011 be given to the Claimants forthwith.

c. A declaration that the decision of the Director of Public Prosecutions instituting or causing to be instituted, continuing, failing or refusing to discontinue proceedings against the Claimants before the conduct of an inquiry and inquest is *ultra vires*, unreasonable, irrational, contrary to law, unfair and likely to cause grave prejudice with respect to the just disposal of the matter.

d. A declaration that the decision of the Magistrate and Coroner to preside over a Preliminary Inquiry into the charge for the offence of Manslaughter laid against the Claimants for causing the death of Peter Oscar Bartholomew by unlawful harm without conducting an inquiry and inquest i into the death of the said Peter Oscar Bartholomew is *ultra vires*, unreasonable, irrational, without authority and contrary to law, unfair and likely to cause grave prejudice with respect to the just disposal of the matter.

e. A declaration that as a direct result of the decisions and consequential actions of the Defendants, the just disposal of the matter has been so

gravely prejudiced that the matter is unable to receive a fair disposal with respect to the Claimants.

f. An order of certiorari to quash the decision of the Director of Public Prosecutions instituting or causing to be instituted, continuing, failing or refusing to discontinue proceedings against the Claimants before the conduct of an inquiry or inquest.

g. An order of certiorari to quash the decision of the Commissioner of Police to suspend the Claimants from duty on half month's pay pending the completion of the hearing with respect to the offence of Manslaughter.

h. An order of prohibition to prohibit the Defendants from continuing with any further proceedings against the Claimants pursuant to the charge of manslaughter that has already been laid against the Claimants and/or from taking any further action against the Claimants as a result of the death of the said Peter Oscar Bartholomew until further or other order of the Court.

i. Costs

Background

[4] The five Claimants are all members of the Royal Grenada Police Force ("the RGPF"). Roddy Felix, Edward Gibson, Shawn Ganness and Kenton Hazzard are designated as Police Constables, while Wendell Sylvester is designated as a Rural Constable. Constables Felix, Sylvester and Hazzard were attached to the St. David's Police Station, located at Petite Esperance in the Parish of St. David. Constables Ganness and Gibson were attached to and stationed at the Traffic Department, Carenage in St. Georges. They were all on active duty on December 26, 2011.

[5] On that date, Peter Oscar Bartholomew, ("Bartholomew") was taken into custody and detained at the St. David's Police Station as a result of an incident occurring between him and a female Police Constable who had previously been in the company of Constables

Ganness and Gibson. In the process of taking him into custody, it is alleged that Bartholomew was being aggressive towards the police officers. It was further alleged that the Claimants, at different points in time, participated in subduing and placing him under arrest at the Police Station, and in so doing, used unlawful force on his person. As a result, Bartholomew collapsed and had to be taken to the General Hospital in St. George's where he subsequently died on the morning of December 27, 2011.

[6] An investigation was subsequently conducted by the RGPF and all the Claimants were eventually detained, questioned and then charged on different dates between December 31, 2011 and January 1, 2012, with the offence of Manslaughter in respect of the death of Bartholomew. On January 3, 2012, each of the Claimants received a letter from the Commissioner of Police notifying him that, as a result of the charge having been laid against him, he was suspended from duty on half month's pay with retroactive effect from the end of December, 2011.

[7] On January 6, 2012, the First Defendant commenced proceedings on a preliminary inquiry at the Magistrate's Court at St. David's in respect of the charge of Manslaughter preferred against the Claimants. Bail applications were made, and subsequently granted, to the Claimants. Further proceedings were adjourned to January 26, 2012. On the resumption, both Dr. Alexis and Mr. Clouden, Counsels for the Claimants Gibson and Felix, respectively, challenged the Magistrate's decision to proceed with the preliminary inquiry without a Coroner's inquiry or inquest being first conducted. Those challenges were opposed by the Director of Public Prosecutions.

[8] As a result of the First Defendant's decision to proceed with the preliminary inquiry, the Claimants sought and obtained leave to apply for judicial review for the orders of certiorari, prohibition and the several other declarations earlier referred to.

[9] The Claimants, by their Fixed Date Claim Form applications, have, in essence, contended that, by virtue of the fact that Bartholomew's death resulted from an incident which occurred at a place of lawful detention, that is, the St. David's Police Station, there should, properly, be an inquiry conducted by the Coroner, pursuant to the provisions of the Coroners' Act. The Claimants contended further that the Coroner had a mandatory obligation to hold an inquiry, and if necessary, conduct an inquest as first steps in the

proceedings. Unless and until such steps have been taken, the Claimants hold the position that there can be no proper basis in law for criminal charges to be laid against them, as has been done by the Commissioner of Police, acting under the direction of the Director of Public Prosecutions. Further, the Claimants contend that the decision of the First Defendant to proceed with the preliminary inquiry was *ultra vires*, null and of no effect in law.

The issues:

[10] The primary issues for the Court's consideration are set out below:

(a) Whether Section 9 of the Coroners Act, Cap 69 imposes on the Coroner a mandatory requirement to conduct an inquest in the circumstances of this case; and

(b) Whether the Commissioner of Police and the Director of Public Prosecutions had the power to charge the Claimants with Manslaughter without a Coroner's inquiry and inquest having first been held pursuant to the provisions of the Coroners Act.

[11] Any tangential issues arising from the reliefs sought in the different Claims would be determined once a decision had been arrived at in respect of these primary issues.

The Claimants' Case

"The Gibson Claim"

[12] Dr. Francis Alexis, QC, in arguing the matter on behalf of Edward Gibson, stated his intention to rely on the under mentioned documents:

(a) The Fixed Date Claim Form filed on April 12, 2012;

(b) The supporting Affidavit of same date, together with the Exhibits attached thereto;

(c) The Affidavit of Assistant Superintendent of Police (ASP) Ignatius Mason, filed on April 19, 2012;

(d) The Affidavit of Nakisha Lewis filed on April 19, 2012 on behalf of the First Defendant;

(e) The Affidavit in Reply of Edward Gibson filed on April 26, 2012

(f) The Skeleton Arguments filed on June 6, 2012; and

(g) The bundle of documents filed on behalf of the Defendants on June 8, 2012.

[13] He then made the following submissions:

(i) That the Claimant Edward Gibson ("Gibson") was seeking a review of the decision of the Magistrate, Eastern Magisterial District, St. David's to proceed with the holding of a preliminary inquiry into the charge of Manslaughter by unlawful harm laid against Gibson and the other Claimants.

(ii) That on the premise that the alleged harm had been done at the St. David's Police Station, a public institution, which was a place of lawful detention, the Magistrate had to take certain steps before proceeding with the preliminary inquiry. He pointed out that the "controlling element" for the Magistrate's action was the fact of the alleged harm having taken place in a public institution. By virtue of that occurrence, it was mandatory that the Magistrate (ex officio Coroner) take certain steps before proceeding with the holding of the preliminary inquiry.

(iii) Those steps involved the holding of an inquiry into the cause of the death of Bartholomew and, based on the results of that inquiry, to then conduct an inquest into the death.

(iv) That the application was based on the provisions of the Coroners Act, Cap 69 of the 2010 Revised Laws of Grenada.

(v) That Section 10 (1) of the Act, which concerned sudden deaths generally, obliged a Coroner to inquire into the cause of every sudden death occurring within her district where there is reasonable cause to suspect that such death was occasioned by either accident or violence

(vi) That Section 9 specifically concerned death of persons confined in any public institution such as a place of lawful detention. That it was put into the laws to deal specifically with the fact situation that was now before the Court.

(vii) That the generality of Section 10 could not derogate from the specificity of Section 9 so that, in a case where there is the death of a person confined in a public institution such as a place of lawful detention, the governing provision must be Section 9.

(viii) That an application of the provisions of Section 9 of the Act involved two stages; firstly, the Coroner having a duty to inquire into the cause of every such death and, secondly, where there is reasonable cause to suspect that such death was occasioned by accident or violence, the Coroner having a duty to hold an inquest. That the words "every such death" as they occur in line 1 of sub-section 9(2) referred back to the words "death of any person" in sub-section 9(1).

(ix) That once the foundation had been laid, that foundation being the death of a person in a place of lawful detention, then sub-section 9(2) operates. In that sub-section, attention was to be paid to the use of the words "shall" and "duty".

(x) That since the charge alleged that "harm" had been done to Bartholomew, and particularly since ASP Ignatius Mason in Paragraph 9 of his Affidavit of April 19, 2012, made on behalf of the Commissioner, stated that excessive force was used by the Claimant, then there was reasonable cause to suspect violence. This statement should, inevitably, lead to the Coroner exercising the duty to hold an inquest. The introduction of violence through the use of the word "harm" was sufficient for meeting the threshold for the holding of an inquest. That both the Commissioner of Police and the Director of Public Prosecutions would have become bound by the affidavit evidence of ASP Mason that death occurred by violence.

(xi) That notwithstanding this, the Court should, however, only be concerned principally with the first stage of Section 9, that is, whether there was a duty on the Coroner to inquire into the cause of Bartholomew's death, it being a death of a person confined in a place of lawful detention.

(xii) That guidance was to be had from Section 3 (5) of the Interpretation and General Provisions Act, Chapter 153 which stated that –

> "In every written law, except where a contrary intention appears, the word "may" shall be construed as being directory or empowering and the word "shall" or "must" shall be construed as being mandatory or imperative."

(xiii) That there was no contrary intention appearing to the word "shall", in Section 9 (2) of the Act.. That it was manifest that the intention was that the word "shall", as used in the sub-section was mandatory or imperative. That it was clearly Parliament's intention that, regarding the death of a person confined in a place of lawful detention, Section 9 (2) should apply.

(xiv) That it is vital to the Rule of Law and the administration of justice that any death occurring by violence in a place of lawful detention be inquired into by jurors and a Coroner. That was to be considered as "open justice".

(xv) That Section 9 was intended to deal with a situation where security forces should be "protective". Parliament was, in effect, saying that in these circumstances, there should be an inquiry. This is to be contrasted with Section 10 (1) where the words "if necessary" are used. This Section is intended to deal with deaths generally as opposed to the specific circumstances identified in Section 9 of the Act.

[14] In support of his submissions, Dr. Alexis called in aid the Canadian case of **Batary v Attorney-General for Saskatchewan**[1], the English case of **Re Cook**[2] and the Zambian case of **Oliver John Irwin v The People**[3] to illustrate the importance of the Coroner's role and the necessity to have the Coroner's inquiry before the holding of a preliminary inquiry. He submitted that, from these cases one could extrapolate that the coroner's inquiry/inquest should be given priority. If there was to be any departure from this, there must be clear statutory language such as existed in **Irwin** to show a contrary intention as referred to in the Interpretation and General Provisions Act[4].

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[1] [1965] S.C.R 465
[2] (1845) 7 QB 653
[3] (1993-1994) Z.R.7 (SC
[4] Chapter 153, Volume 8 of the 2010 Revised Laws of Grenada

[15] He conceded that, whereas the principle coming out of **Re Cook** was that, where a person is committed for trial under a magistrate's warrant, the High Court could have that person brought before a Coroner, he submitted that, placed in proper context, the Judge was merely saying that, although the Court had the power, it was rarely used. He submitted further that in the instant case, that was not the situation as the charges had been laid by the Commissioner of Police. Although the Director of Public Prosecutions undoubtedly had the power, there was no process or instrument before the Court to show that the Director of Public Prosecutions had exercised or purported to exercise his power in these proceedings.

[16] Dr. Alexis reiterated that the Gibson claim was concerned only with the interpretation of Section 9 (2) of the Coroners Act. As a result of this, Section 71 (2) of The Constitution of Grenada, insofar as it relates to the powers of the Director of Public Prosecutions to, *inter alia*, institute, take over and continue criminal proceedings, was irrelevant.

[17] He concluded by submitting that any departure from the position, as currently exists in Section 9 (2) of the Act, would require clear and strong language from Parliament as occurred in **Irwin**[5].

"The Felix Claim"

[18] Mr. Clouden, in arguing the matter on behalf of the Claimant Roddy Felix, indicated his acceptance, *mutatis mutandis* of the arguments advanced by Dr. Alexis. His Skeleton Arguments, filed on June 6, 2012, on which he relied and upon which he expanded, covered the following points:

(i) That Section 9 of the Coroners Act explicitly stated the duties of Coroners in cases of sudden death or suspicious or unnatural deaths in places of lawful detention.

(ii) That Section 10 (1) of the Coroners Act imposed the general duty on the Coroner to hold an inquiry into sudden deaths.

[5] Supra

(iii) That Section 3 (5) of the Interpretation and General Provisions Act[6] stated unequivocally that -

> "(i)n every written law, except where a contrary intention appears, the word "may" shall be construed as being directory or empowering and the word "shall" or "must" shall be construed as being mandatory or imperative".

(iv) That an interpretation of the meaning of the legislation was to be deduced in light of established principles of interpretation and construction and that the "Literal Rule" of statutory interpretation should be the first rule applied.

(v) Relying on pronouncements in ***Pepper (Inspector of Taxes) v Hart***[7], he pointed out that judges have coupled the literal approach with the purposive approach to the interpretation of statutes. He supported this with the following reference from Blackstone, as quoted in Cross' Statutory Interpretation (3rd edition):

> *"the fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law".*

(vi) That attention should be focused on the words used by Parliament in the statute and not their subjective intent. That, from the words of the statute, there are no indications of contrary intention and the use of the word "shall" was distinct.

(vii) That the subject matters in his application are entirely dependent on the interpretation of Section 9 of the Coroners Act, rather than on a construction of Section 71 of the 1973 Constitution of Grenada. Section 71 of the Constitution dealt with the office of the Director of Public Prosecutions and the exercise of his powers.

(viii) That, based on the charge laid against Felix, the alleged unlawful harm occurred at the Saint David Police Station, both a public place and a place of lawful detention and, by virtue of this, it was mandatory, and not merely directory, that the Coroner conducted an inquiry. If the result of that inquiry established reasonable cause to suspect that the death

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[6] Chapter 153, Volume 8 of the 2010 Revised Laws of Grenada stated

[7] [1993] 1 All ER 42

was occasioned by accident or violence, the Coroner was mandated to then hold an inquest into the death of Bartholomew.

(viii) That the holding of the inquiry was a critical procedural step and by abrogating it, the Claimant Felix has been placed in jeopardy. That the importance of the duty and work of the Coroner cannot be dismissed because the performance of, or failure to perform, such duty would significantly affect the Claimant's rights and the course of any criminal proceedings.

(ix) That the jurisprudence and the statute have clearly established that "shall" is and has always been construed as imperative and mandatory. That there is an obligatory duty imposed on the Coroner to hold an inquiry when certain circumstances arise, as in the instant case.

(x) That the provisions of Section 42 of the Coroners Act, which imposed a fine on a Coroner, who neglected his or her duty, underscored the seriousness of a failure to perform one's duty.

"The Ganness Claim"

[19] Mr. Hood, on behalf of the Claimants Shawn Ganness, Wendell Sylvester and Kenton Hazzard, like Mr. Clouden before him, also indicated his adoption of the submissions of Dr. Alexis. Additionally, Mr. Hood made the following submissions:

(i) That the main issue before the court was whether the duty placed upon the Coroner by Section 9 of the Act was mandatory or whether the first Defendant had a discretion in the matter.

(ii) That the Director of Public Prosecutions ("DPP") had been joined in his action as he (the DPP) should have stopped the proceedings and not have allowed them to continue.

(iii) That there could be no factual dispute as to whether the situation before the Court fell within the provisions of Section 9 of the Act.

(iv) That there was a glaring omission from the evidence of the Defendants. Section 9(1) of the Coroners Act required that, once a death had occurred (as it had on December 27) a report was to be made. That, as far as he was aware, he had not seen anything to suggest that a report had been made. That, neither the Coroner, the Police nor the Director of Public Prosecutions had addressed their minds to the provisions of the Act and the mandatory requirement for the report.

(v) That the Court was being asked to deal with an ordinary piece of legislation. That the import of Section 9 was that the very first person who must be contacted, once someone died in a place of lawful detention, was neither the Commissioner of Police nor the Director of Public Prosecutions. Instead, once someone died in a place of lawful detention and before any person is suspected, the Coroner was to be contacted.

(vi) That by virtue of the Coroner failing to take charge of the body of Bartholomew, she had abdicated her duty. That there was a glaring omission in Paragraph 8 of the Affidavit, filed by Nakisha Lewis[8], on behalf of the Coroner in that the Coroner has given no reason as to why she did not have a mandatory duty to do so. That it was quite obvious that the Coroner did not apply her mind to the provisions of Section 9 of the Act.

(vii) That the contents of Paragraph 14 of the said Affidavit (of Nakisha Lewis), did not have anything to do with the Coroner's mandatory duty. Rather, those issues raised in the paragraph were tangential. That, contrary to the views expressed by the Coroner through that Affidavit, the Coroners Act provided her with a swift and efficient method to gather evidence. The Act provided her with a tool to get through to the High Court in a matter of days. The provisions of Sections 15 and 17 of the Act supported this swift and efficient method. Those sections provided for the summonsing of jurors, even from bystanders and this could even be done verbally.

(viii) That the intention of Parliament was to make the process speedy and all embracing. It involved a question of the confidence of the public in that institution. It was Parliament's intention to preserve that. That this was embodied even in the Oath to be taken by jurors, as set out in Section 22 of the Coroners Act, where jurors would inquire into "when, where, how and after what manner" the deceased died. This determination

[8] Affidavit filed on April 19, 2012

was not one to be made by the Director of Public Prosecutions or the Commissioner of Police. If the Commissioner of Police proceeded to act, he would be acting prematurely.

(ix) That Sections 25, dealing with the apprehension of witnesses not attending, and Section 28, dealing with the power to take bail in a case of manslaughter, underscored the seriousness of the Coroners' duty.

(x) That his clients, Ganness, Sylvester and Hazzard, had been unfairly selected. This was borne out by the contents of Paragraph 9 of the Amended Affidavit of Shawn Ganness, filed on May 15, 2012. There, Ganness had stated that "there were several police officers at the police station at the relevant times...who were involved with subduing Bartholomew". This evidence had not been resisted by the Defendants.

(xi) Referring to Section 9 (2) of the Act, it was to be noted that it did not say that "the Coroner shall inquire into the cause of death...". The language of Section 9 (2) is much stronger than that. Rather than it being a simple requirement, the section creates a mandatory duty by stating that "it shall be the duty of the Coroner". Support for this view was to be found in Bennion on Statutory Interpretation[9] where the author pointed out that "a duty to do a thing in a certain way by implication imports a duty not to do it in any other way."

(xii) Further, Bennion pointed out[10] that "[w]here an Act confers a conditional right to interfere with the freedom of any individual, the prescribed conditions are treated as mandatory and must be strictly complied with." The Coroners Act did deal with the potential to interfere with liberty as is shown in Sections 27 and 28 where it is made clear that a Coroner can grant bail or keep a person in custody. It was obvious that the Coroner had not read the Act closely as all the powers to be used in conducting a preliminary inquiry were incorporated in the Act.

(xiii) That the provisions of Sections 32 through Sections 35, dealing with procedures, emphasised how important the matter was and how it was to be dealt with by the Coroner. That the "litany of offences" listed in Sections 42 to 50 of the Act demonstrated that Parliament intended the holding of an inquiry to be serious.

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[9] 5th edition Page 49
[10] Page 52

(xx) That a fair trial of the Claimants has been compromised by virtue of the actions of the Commissioner of Police. By their actions, the Defendants have poisoned the minds of the public towards the Claimants without allowing for the process, with all the information, being put in the public domain. If the Court was to find that an inquest should take place, what would be the impact on the minds of the potential jurors if the Commissioner of Police had already charged five persons? That the Commissioner of Police and the Director of Public Prosecutions had usurped the authority of the Coroner's inquest by singling out five persons and proceeding as if those five persons alone are involved. That, this was unfair to those five persons hence the application for an order of Prohibition.

(xxi) The effect of the decision of the Defendants included the indignity of arrest and interrogation, the imposition of bail conditions, bail being resisted by the DPP even though no inquest had been held, the matter occupying local and international publications, the Applicants' names being submitted to INTERPOL and prejudice in their bail documents.

(xxii) That the Applicants were entitled to a fair hearing. This included the statutory requirement of the Coroner's inquest being held as a pre-cursor to any other action. That the Court was to ascertain whether fairness had not been compromised and intervene as set out in the prayers of the Claim submitted by the Claimants.

The Defendants' Case

The Solicitor General's submissions

[20] Mr. Ramdhani, Solicitor General, having informed the Court that the Director of Public Prosecutions would deal with the issues of (a) whether the Commissioner of Police and the DPP had the power to charge the Claimants with Manslaughter before an inquest was held, and (b) whether the Commissioner of Police could properly suspend the Claimants on half pay, then made the following submissions on behalf of the First and Second Defendants:

(i) That the approach taken by Counsel for Ganness, Sylvester and Hazzard, during his submissions, was fallacious for a number of reasons. Specifically, under the provisions of Section 8 of the Constitution of Grenada, there was the presumption of innocence.

(xiv) That Section 42 of the Act imposed a penalty on the Coroner for neglecting his or her duty.

(xv) That the inclusion of the list of offences in the Act by Parliament was intended to protect the integrity of the Coroner's inquiry and to ensure that all available evidence came to the fore. This was Parliament's intention: to preserve the integrity of the institution.

(xvi) That the findings from a Coroner's inquest are distinguishable from those in a preliminary inquiry. Section 105 of the Criminal Procedure Code[11], allowed other public officials to intervene. It allowed for the possibility of challenge before a Judge. No such power existed with respect to the outcome of a Coroner's inquest. The reason for this is that the jury, not the DPP or the Coroner, would have made a determination and Parliament intended to protect the integrity of the public institution.

(xvii) That Section 3(5) of the Interpretation and General Provisions Act made it mandatory for the Coroner to hold the inquest and this was borne out in the case of **Regina v Greater Manchester North District Coroner, Ex parte Worch and Another**.[12] There, the Court had found that, since the deceased had died in circumstances in which it was likely that he had been killed when his car crashed, there was a suspicion that he died a violent or unnatural death; that, accordingly the Coroner was under a duty to hold an inquest in accordance with the Coroners Act. That the same treatment should be meted out where someone dies in a special place, as in the instant case.

(xviii) That the conclusion to be drawn from the words used in Sections 9 and 42 of the Coroners Act was that Parliament wanted a quick, sure procedure so that public confidence will be appeased.

(xix) That the basis of the suspension of Ganness, Sylvester and Hazzard is the charge of Manslaughter laid against them. Accordingly, if the charges fell, the order for suspension should also fall. During an inquest, there is usually no accused; the Coroner is merely taking evidence. If it is that they have been charged and wrongly suspended, then the Court should grant the relief sought.

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[11] Chapter 72B of the Laws of Grenada
[12] [1987] QB 627

That, from a jurisprudential perspective, the Constitution was the logical starting point. This was "triggered" once a person was charged with a criminal offence. The Constitution did not lay out any particular procedure to be followed in those circumstances. Instead, it allowed for those details (of procedure) to be dealt with by other pieces of legislation along with the common law.

(ii) That the critical question for consideration was whether the Coroners Act provided sufficient details of due process so as to exclude the provisions of any other laws. In other words, do the provisions of that Act exclude other laws?

(iii) That, there was nothing in the Coroners Act that excluded the provisions of the Criminal Procedure Code, the Judges' Rules, the statutory powers of the Police to prefer charges or the constitutional office of the Director of Public Prosecutions to institute charges in Grenada.

(iv) That he was prepared to concede that Section 9 of the Coroners Act was relevant to the case at Bar as it concerned a death occurring at one of the places mentioned in the Section with that death having been attended by violent circumstances.

(v) That although considerable emphasis was being placed on the use of the word "shall" in order to find a mandatory obligation, having regard to the provision of Section 3 (5) of the Interpretation and General Provisions Act[13], the Court should not merely look at the word "shall" and leave it at that. The Court is required to look at the written law in its entirety to see if there is any contrary intention expressed. That, relying on the learning in Bennion,[14] the Court should definitely look at the entire legislation in order to appreciate the context. That the Court should look at both Sections 9 and 42 of the Coroners Act. That Section 42 made it clear that where there is a duty imposed on the Coroner he/she would be guilty of an offence unless he/she had a reasonable excuse for not exercising that duty.

(vi) That, he would rely on Bennion[15], where it was said that -

[13] Chapter 153 of the Laws of Grenada
[14] Bennion on Statutory Interpretation (5th edition) at page 48
[15] Bennion at page 50 (Mandatory and Directory Requirements)

"Where a court or tribunal is given in terms power to exercise a certain jurisdiction, this may be construed as imposing a mandatory duty to act. This will arise where there is no justification for failing to exercise the power. In such cases, as it is often put, 'may' is held to mean 'shall'. Where, however, a genuine discretion to act or not to act is conferred, there can be no compulsion to act."

That notwithstanding the use of the word "shall" in Section 9, the Legislature can give a direction to persons on whom a discretion is conferred. That, the provisions of Section 42 revealed the granting of a discretion and answered the question whether Section 9 was mandatory or not.

(vii) That the Court is required to put into context the "qualitative nature" of the Claimants' actions in light of the provisions of the Coroners Act. That the public is not merely concerned about due process but also that the public needs to see that justice is done. That the public would only be appeased when the ordinary criminal law process was engaged. Further, that the Claimants' argument that an inquiry, and then an inquest, must be held is tainted and without merit. That there was a far more constitutionally sound process which should guide the present situation; that being a charge under the criminal law.

(viii) That the real question to be asked was – "whether it made sense to say, from a criminal standpoint, that the Coroner would have a good reason not to embark on an inquest?" That, in a practical light, if the Coroner looked at the case and felt that the proceedings were duplicitous, having regards to charges already filed, not only would the Coroner be avoiding financial and administrative burden on the justice system but she would also be preventing situations of inconsistent verdicts.

(ix) That there is nothing in the Coroners Act barring the Commissioner of Police or Director of Public Prosecutions from proceeding when there has been a "no verdict" ruling after the holding of an inquest. That there would be public consternation if the Coroner returned a decision of "no verdict" and then the DPP returned a verdict of guilty. That this interpretation lends credence to the view that a discretion is to be found from a reading of the Coroners Act. That the Claimants can ask for no more than that due process is

followed and the recognition of a discretion under the Coroners Act does not deny them due process.

(x) That the Claimants must prove every element in their claim. In respect of the Coroner and the Magistrate, there is a presumption of law that she has acted in good faith. That, if that presumption is to be displaced, it must be displaced by affirmative evidence. That, the evidence of the Claimants clearly shows that they did raise the issues before the Magistrate so that, they cannot now be heard to say that she did not consider their submissions. In this regard, attention should be paid to sub-paragraph (d) of Paragraph 14 of the Affidavit of Nakisha Mason[16], where the Magistrate gave her reasons for not proceeding with an inquiry.

(xi) That the whole issue should be considered in a practical manner and that the Court should not allow the dual matters to proceed. Reliance was being placed on Section 42 of the Coroners Act where allowance is made for "reasonable excuse".

(xii) That, insofar as his representation of the Commissioner of Police is concerned, he asked the Court to have due regard to the provisions of the Judges' Rules,[17] specifically Paragraph (d) of Appendix A, which excluded the application of the Rules to the principle that

> *"when a police officer who is making inquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he or she should without delay cause that person to be charged or informed that he or she may be prosecuted for the offence."*

In support of this position, reliance was being placed on the quotation from Lord Devlin in *The Criminal Prosecution in England (1960)*[18], referred to in the case of **Shabadine Peart v The Queen (Jamaica)**,[19] where the Court made pronouncements as to when the police could lay charges. That the power of the Police to lay charges was also highlighted in a quote from Lord Denning in **Reg v Commissioner of Police of the Metropolis ex parte**

[16] Affidavit filed on April 19, 2012
[17] Chapter 336 Laws of Grenada
[18] The Criminal Prosecution in England (1960) at page 26
[19] [2006] UKPC 5 (14 February 2006) at page 15

Blackburn.[20] There, the common law powers imposed on the "Chief Constable" in England to enforce the law, were set out in this manner –

> *"He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected men are to be prosecuted; and if need be, bring the prosecutionor see that it is brought"*[21].

(xiii) That, in essence, all that is needed for the Police to institute a charge against any person is admissible evidence which could likely lead to a conviction. That, the powers of the Police, to act in such circumstances, had not been excluded by the provisions of the Coroners Act. That, if such an exclusion was to be implied in the Act it would deal a tremendous blow to the Police in the country.

(xiv) That there may be occasions when one cannot ask the police to police themselves. That those arguments of the Claimants would have merit only where the police fail to do something. That in the event the police adopted an unfair approach and only brought charges against some persons while leaving out others, then guidance could be sought from the constitutionally independent office of the DPP.

(xv) That, in conclusion, a common sense approach should be taken by the Court to minimize any adverse public perception.

The Director of Public Prosecution's submissions

[21] Mr. Christopher Nelson, Director of Public Prosecutions, made the following submissions;

(i) That there was no dispute that the charges against the Claimants were preferred on the direction of the Director of Public Prosecutions. That the DPP had constitutional powers to act in this manner, separate and distinct from the powers of the Police to act in their own right. Section 71 of The Constitution of Grenada, which created the office of the DPP and set out his powers, was applicable.

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[20] [1968] 2 QB 118
[21] Page 136

(ii) That the pith and substance of Mr. Hood's submissions was that it was for the Coroner's inquest to determine if criminal charges should be initiated and against whom. That the thrust of Mr. Hood's submissions amounted to "legal heresy" since the DPP would only be entitled to proceed with prosecutions after the Coroner's jury had decided. That in the **Steadroy Benjamin v The Commissioner of Police and the Attorney General of Antigua**[22] case, Edwards, J.A. had pronounced that the DPP was the 'gatekeeper', and so, in the instant case, the Coroner could not tell the DPP when to proceed. That, by Mr Hood's submissions, he was suggesting that an ordinary piece of legislation (the Coroners Act) could override the provisions of the Constitution.

(iii) That although the Coroner was a route through which criminal proceedings could be instituted, it was not the only route. Proceedings could also go through the Police and the DPP .

(iv) To Dr. Alexis' argument that the DPP had not issued a certificate to show that he had taken over the proceedings, he was of the view that was not necessary although it was good practice. ASP Mason, in his Affidavit[23] had given evidence that the charges had been laid against the Claimants on the instruction and direction of the DPP. That, this had not been challenged by the Claimants. That relying on the authority of **Satnarine Sharma v Carla Browne Antoine and Others**[24], a challenge to the DPP's position rarely succeeds and only in clearly defined circumstances. This was further reinforced by the decision in **Steadroy Benjamin**[25]where the DPP in Antigua, having instructed the Police not to proceed in a matter, the Commissioner of Police, relying on his statutory powers, preferred a charge, and had that decision struck down by the Court.

(v) That Mr. Hood was not entirely correct in his submissions that the Coroners Act had in place "a criminal machinery". That, the "criminal" intention was nothing more than a potential incidental outcome from the application of the provisions of the Act. The true function of the inquest was to be found in the provisions of Sections 22 of the Act as embodied in the Oath of jurors to decide "when, where, how and after what manner". That was not to be used to determine if a crime had been committed.

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[22] HCVAP2009/023
[23] Affidavit filed on April 19, 2012 at Paragraph 12
[24] Satnarine Sharma v Carla Browne Antoine et al [2006] UKPC 57
[25] HCVAP2009/023

(vi) That he disagreed with Mr. Hood's position that it was for the Coroner's inquest to determine if criminal charges should be initiated and against whom. That he could not agree with him that it was for the Coroners' jury to decide and then the DPP would take over.

(vii) That the Coroner was simply an old institution aimed at having some public inquiry into the death of someone in order to satisfy due process. Additionally, it is intended to inform public policy if there is some infectious disease or procedure in the prison or mental health institution. The authority for this was to be found in **McKerr v Armaugh Coroner and Others**[26] where it was said, inter alia, that –

> *"Once again, it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt....In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish the facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use."*

That it is not the law that the Coroner is the "gate keeper"; it was not the law and it is not intended to be the law.

(viii) That a well-equipped investigative machinery currently exists in the Police Force and the DPP. That the Court should pay scant regard to any position being advanced that a Coroner, with only incidental investigatory authority, must have precedence over authorities with specific powers. That in **Batary**[27], proceedings were being conducted simultaneously by the Coroner and the Court.

(ix) That in Canada, in England and in some of the sister islands of the Caribbean, the incidental criminal function of the Coroner had been removed.

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[26] [1990] All E.R. 864
[27] Supra

(ix) That the DPP's involvement in these proceedings was not as a result of the Constitution but rather because the Claimants, in the Ganness Claim, had involved the DPP by instituting certiorari proceedings. That ASP Mason in his Affidavit had deponed that that the DPP was the decision maker so that, naturally, if the Claimants succeeded in their claim that the Coroner was wrong in not holding an inquest then the prosecution brought by the DPP must be stayed or quashed pending the outcome of the inquest.

(x) That if the Court was to grant the relief prayed for, it would raise the question of the importance of Section 71 of the Constitution. That any attempt to stop the DPP from prosecuting and subjecting him to control and direction by a Coroner's jury is tantamount to "constitutional contempt".

(xi) That if the criminal machinery is properly engaged and the DPP is entitled to continue to prosecute the charges, wherever the evidence leads, then to what end is the holding of the Coroner's inquest? That the Coroner's inquest and its imposition would amount to nothing more than a *brutum fulmen*.

Claimants' rebuttal submissions

"The Gibson Claim"

[22] By way of rebuttal, Dr. Alexis submitted as follows:

(i) That, in essence, both the DPP and the Solicitor General were asking the Court to repeal, or ignore, the Coroner's Act. According to the Solicitor General, compliance with the provisions of the Act will result in a financial burden on the State, while, according to the DPP, the "potential incidental criminal function" of the Act has been repealed "left, right and center". Inherent in that approach is that the Court should ignore the law of the land or to repeal it.

(ii) That the Solicitor General's reliance on Section 42 of the Act for justification for the exercise of a discretion is misguided. That on the contrary, that Section imposes a mandatory duty on the Coroner. That the thrust of the Solicitor General's case was the provisions of Section 42, the inconvenience that was likely to be caused and the costs.

(iii) That the Court should always be wary of arguments about inconvenience to the State. Those arguments should have no place in the Court's determination of the issues in the instant cases. If it is deemed necessary, actions should be taken to have the law repealed.

(iv) That it was noteworthy that the Defendants had made no attempt to analyse Section 9 of the Coroners Act. They focused their attention on Section 42 instead. That they failed to give the Court an analysis of the Act.

(v) That from the Affidavit of ASP Mason, it was clear that the DPP did not institute the prosecutions. That it was clear that there were no references to instructions being given by the DPP.

(vi) That the Court should note that the Claimant Gibson did not join the DPP to the action as the DPP had nothing to do with the matter.

"The Felix Claim"

[23] Mr. Clouden, essentially, adopted the rebuttal submissions of Dr. Alexis and added the following points:

(i) That the provisions of the Coroners Act not only provided a protective mechanism so as to ensure fairness of its proceedings but was also intended to carry out the intention of Parliament. That it was incumbent on the Court to get at the intention of Parliament and to determine the scope of the statute to be considered.

(ii) That the issue at hand was not the question of the DPP's powers or the exercise of those powers. What was before the Court was whether the Magistrate, as Coroner, neglected her duty to act mandatorily in these matters.

(iii) That neither the DPP or the Solicitor General advanced the position that the Coroners Act had no place in the adjudication process and was worthless and should be repealed or expunged. That he was fortified in his interpretation of the procedure laid down in the Act by reference to the following extract from Bennion[28] on Statutory procedures -

[28] Page 50 - 51

"Modern regulatory Acts often confer power on public authorities to take coercive action of one sort or another. The legislation lays down a procedure to be followed, and the question may arise as to the effect of a failure by the authority to take one of the prescribed steps. If the step is mandatory, the failure vitiates the exercise of the statutory power. If the step is merely directory, the failure will not be fatal. In deciding whether the step is mandatory or directory, the court considers the broad policy of the Act and the principle of fairness to the subject."

(iv) That the exercise of powers of the DPP was not being questioned. That was not the issue before the Court. That what was in issue was whether the Magistrate, as Coroner, neglected to do her duty in keeping with the requirement to act mandatorily in these matters.

(v) That the actions were brought in the name of the Police and there was nothing in the record to show that the DPP had anything to do with them. The Claimants would be prejudiced if the Magistrate, as Coroner, failed to act in the manner that the law demanded. That as Coroner, she was subject to the law of the land and was expected to obey the law with scrupulous regard to all its provisions.

"The Ganness Claim"

[24] Mr. Hood made the following submissions in rebuttal:

(i) That, having heard both the DPP and the Solicitor General, nothing had been said by them to displace the proposition about the DPP instituting proceedings.

(ii) That the Affidavit of Nakisha Lewis, sworn on behalf of the Magistrate, gave no indication that she had heard from the Claimants Felix, Ganness, Sylvester and Hazzard. Accordingly, Felix had not been given any chance to convince the Magistrate of his position.

The Law

[25] Having heard the arguments from the Claimants and the Defendants, a convenient starting point for a consideration of the several issues raised is the legislation that stands at the centre of each claim, the Coroners Act.

[26] The provisions of Sections 9, 10 and 42 of that Act have featured prominently throughout this hearing. A true interpretation and understanding of these Sections is critical to a determination of the primary issues, as identified in Paragraph [10] above.

[27] The Sections are set out hereunder in their entirety. Both sections 9 and 10 fall under that part of the Act dealing with the ***"Duties of Coroners and others in cases of Sudden or Suspicious or Unnatural Death"*** while Section 42 fall under that part of the Act dealing with **Offences**.

Inquiry into cause of death of persons confined in prisons, lunatic asylums, etc.

9. (1) The keeper or other person in charge of any prison, mental hospital, or other place of lawful detention, shall forthwith report to the Coroner of the district the death of any person confined in any such pubic institution.

(2) It shall be the duty of the Coroner to inquire into the cause of every such death and, where there is reasonable cause to suspect that such death was occasioned by accident or violence, or in the case of a sudden death of which the cause is unknown, to hold an inquest.

Sudden deaths, etc.

10. (1) It shall be the duty of every Coroner to inquire into the cause of death, and, if necessary, to hold and inquest -

(a) in the case of every person found dead within his or her district;

(b) in the case of every sudden or other death occurring within his or her district where there is reasonable cause to suspect that such death was occasioned by either accident or violence;

(c) in the case of every sudden death or unnatural death occurring within his or her district of which the cause is unknown.

Neglect of duty by Coroner

42. Every Coroner who refuses or neglects, without reasonable excuse, to hold any inquest or inquiry which it is his or her duty to hold, or to perform any duty

which he or she is required by this Act to perform, shall be guilty of an offence and liable on conviction on indictment to a fine of five thousand dollars.

[28] The Defendants have made references to, and placed heavy reliance on the provisions of Section 71 of The Constitution of Grenada and Part IV of the Police Act, Cap. 244.

[29] Section 71 of the Constitution of Grenada deals with the office of the Director of Public Prosecutions and the powers given to the holder of that office. Part IV of the Police Act sets out in details the powers and duties of police officers. I do not consider it necessary to set out these provisions in details.

[30] All the parties have, to some extent, referred to the provisions of Section 3 (5) of the Interpretation and General Provisions Act in respect of the definition of the word "shall" within the context of Section 9 (2) of the Coroners Act. That sub-section reads as follows:

> **3 (5)** "In every written law, except where a contrary intention appears, the word "may" shall be construed as being directory or empowering and the word "shall" or "must" shall be construed as being mandatory or imperative."

Analysis

[31] Having considered the several submissions from the Claimants and the Defendants, having referred to the authorities cited and having reviewed the provisions of the Coroners Act, with particular attention being paid to Sections 9, 10 and 42, I am in no doubt that the provisions of Section 9 (2) does impose a mandatory duty on the Coroner to conduct an inquiry where death occurs in any of the places therein identified, namely "any prison, mental hospital or other place of lawful detention".

[32] Applying the provisions of the Interpretation and General Provisions Act in relation to the construction to be placed on the use of the word "shall", as it occurs in sub-section 9 (2), I have no difficulty in arriving at the conclusion that the word is mandatory and creates a duty on the Coroner to conduct an inquiry.

[33] The provisions of Section 9 (2), read in conjunction with the provisions of Section 9 (1) of the Act, to my mind, makes it clear that any death occurring in these circumstances should be treated differently from deaths occurring in those circumstances contemplated in Section 10. The two

situations are clearly distinguishable and it must, logically, have been the intention of Parliament that, the death of a person, who has been lawfully detained, should be inquired into by the Coroner. If upon inquiry, it is found that the death occurred accidentally, violently or for some sudden and unknown cause, then an inquest should, logically, then be held. There is no room for any contrary interpretation of these sub-sections.

[34] That Parliament has seen it fit to create two separate and distinct categories for the conduct of inquiries by the Coroner reinforces in my mind that it must have been its intention to create an added safeguard for persons being held within those named facilities or institutins, who, more often than not, do not have any say in relation to their liberty or the circumstances of their confinement.

[35] In those circumstances, the use of the word "shall", and the context within which it is used in Section 9 (2) of the Act, must have been intended to ensure that a Coroner is compelled to act in the prescribed manner upon the occurrence of a death in the circumstances outlined. When the word "shall" is juxtaposed against the specified instances of a death occasioned by accident, through violence or suddenly without a known cause, then it becomes imperative that the Coroner should be moved to responding in the particular manner set out by the Act.

[36] Contrary to the assertions of Counsel for the Defendants, I am not of the view that the application of the provisions of the Coroners Act usurps the role, function and powers of the Police or the DPP. The Coroners function is only the first in a series of procedural steps recognized in law. It is intended to operation in conjunction with and not in opposition to the functions of the Police and the DPP.

[37] A death occurring in the circumstances detailed in Section 10 of the Act clearly allows the Coroner a discretion as to whether or not to hold an inquest. This can be gleaned from the use of the words "if necessary" occurring within that sub-section. The omission of those, or similar, words in Section 9 is a clear indication that the Coroner was duty bound to act in a particular manner once the conditions referred to in the Section were found to exist. There is not, in my mind, any room for the exercise of any discretion in the application of the provisions.

[38] I have considered the use of the expression "except where a contrary intention appears" as used in the provisions of Section 3 (5) of the Interpretation and General Provisions Act.[29] The provisions of

[29] Chapter 153 of the Laws of Grenada

Section 9 (2), as they currently stand, do not allow for any contrary intention so that I am reinforced in the view that the word "shall" as used can only be mandatory.

[39] I am not persuaded by the submissions of the learned Solicitor General that the use of the words "without reasonable excuse" in Section 42 allows for a discretionary application of the Coroner's duty under Section 9 (2). I do not agree that those words would provide justification to a Coroner for avoiding the mandatory duty imposed.

[40] I have noted from the Affidavit of Nakisha Lewis that the Magistrate had formed the impression that the Coroners Act was discretionary,[30]and that she, therefore, felt that she had a discretion as to whether to undertake the inquest if she had "reasonable reason" not to do so. This was one of the reasons given by her for the decision not to hold the inquest. The Solicitor General has placed much weight on this. I do not share his views in this regards.

[41] On this score, I am of the view that the Magistrate was misguided and thereby fell into error. She was not, in my view, in a position to exercise a discretion as to the conduct of an inquiry in respect of the death of Bartholomew. The fact of his death, in a place of lawful detention, should have triggered an automatic inquiry. I have paid particular attention to the concession by the learned DPP during his submissions that the provisions of Section 9 do, in fact, apply to the circumstances in these cases.

[42] I have heard the arguments advanced by both the learned DPP and the learned Solicitor General in relation to the constitutional role of the DPP insofar as the commencement of proceedings is concerned. Notwithstanding those submissions, and within the context of the operation of the provisions of Section 9 of the Coroners Act, I do not think that the DPP's involvement at this stage of the proceedings is either appropriate or warranted. The Coroner's inquiry must be allowed to take place in accordance with the Act.

[43] Indeed, the decision of the Commissioner of the Police (and I do find, as a matter of fact, that the decision was that of the Commissioner of Police) to prefer charges leading to the commencement of the preliminary inquiry proceedings is also premature. The provisions of the Coroners Act must be adhered to. I do not consider that a strict adherence to the provisions of the Act undermines or usurps the role and function of the DPP of the Commissioner of Police.

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[30] Affidavit filed on April 19, 2012 at Paragraph 14 d.

[44] Upon completion, by the Coroner, of the process contemplated by that Act, the Commissioner of Police and/or the DPP can then take such actions as they deem appropriate and are legally entitled to take. What is important and, in my view, beyond dispute is that the Coroner is duty bound to hold that inquiry and, where there is reasonable cause to suspect that the death was occasioned in the circumstances set out in the Act, conduct an inquest in accordance with the provisions of the Act.

[45] As Mr. Hood, Counsel in the Ganness claim, has observed, the bases of the Claimants' suspension are the charges that have been preferred against them. It follows therefore that since I have concluded that the decision by the Commissioner of Police to charge the Claimants has been made prematurely, then of necessity, those charges will have to be withdrawn at this stage. The suspension letters, with the accompanying reduction in salaries, must be withdrawn.

[46] Having determined the first of the two primary issues identified in Paragraph [10], it naturally follows that the answer to the second issue and any tangential issue arising therefrom have also been determined.

Conclusion

[47] The final decision of the Court is as follows:

In respect of Claim No. GDAHCV2012/0021 ("the Felix Claim") it is hereby ordered as follows:

(a) The claim for an Order of Certiorari to quash as being ultra vires, null and void, invalid and of no effect in law the decision of the Second Defendant to charge the Claimant Roddy Felix with the offence of Manslaughter to Peter Oscar Bartholomew and to suspend him with half pay is granted.

(b) The claim for an Order of Prohibition to prohibit the First Defendant, the Magistrate, Eastern Magisterial District, St. David's from proceeding with holding a preliminary inquiry in respect of the charge of the offence of Manslaughter to Peter Oscar Bartholomew by unlawful harm without the Coroner inquiring into the cause of the said death is granted.

(c) In accordance with Part 65 of the Civil Procedure Rules 2000, I make no order as to costs.

[48] In respect of Claim No. GDAHCV2012/0022 ("the Gibson Claim") it is hereby ordered as follows:

(a) The claim for an Order of Certiorari to quash as being ultra vires, null and void, invalid and of no effect in law the decision of the Second Defendant to charge the Claimant Edward Gibson with the offence of Manslaughter to Peter Oscar Bartholomew is granted.

(b) The claim for an Order of Prohibition to prohibit the First Defendant from holding a preliminary inquiry into a charge of the offence of Manslaughter to Peter Oscar Bartholomew by unlawful harm without the Coroner inquiring into the cause of the said sudden death is granted

(c) In accordance with Part 65 of the Civil Procedure Rules 2000, I make no order as to costs.

[49] In respect of Claim No. GDAHCV2012/0037 (the Ganness Claim") it is hereby ordered as follows:

(a) The claim for a Declaration that the decision of the Second Defendant to suspend the Claimants from duty on half months pay with effect from December 30, 2011 is premature and unreasonable and contrary to law is granted.

(b) That the Claimants be reinstated to full pay forthwith and that all outstanding short payments effected from December 30, 2011 be given to the Claimants forthwith.

(c) The claim for an Order of Certiorari to quash as being ultra vires, null and void, invalid and of no effect in law the decision of the Second Defendant to charge the Claimants Shawn Ganness, Wendell Sylvester and Kenton Hazzard with the offence of Manslaughter to Peter Oscar Bartholomew is granted.

(c) The claim for a Declaration that the decision of the First Defendant in refusing to conduct an inquiry and an inquest into the death of Peter Oscar Barthlomew is *ultra vires*, unreasonable and contrary to law is granted.

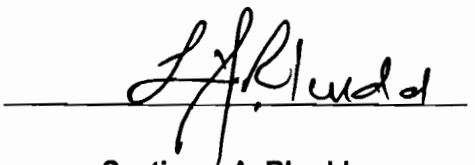
(d) The claim for a Declaration that the decision of the Second Defendant to charge the Claimants with the offence of Manslaughter for causing the death of Peter Oscar Bartholomew before the conduct of an inquiry and an inquest into his death is *ultra vires* and contrary to law is granted.

(b) The claim for an Order of Prohibition to prohibit the First Defendant from holding a preliminary inquiry into a charge for the offence of Manslaughter to Peter Oscar

Bartholomew by unlawful harm without the Coroner first inquiring into the cause of the said sudden death is granted.

(c) In accordance with Part 65 of the Civil Procedure Rules 2000, I make no order as to costs.

[49] The Court apologises for the delay in the delivery of the decision and extends its appreciation to Counsel on both sides for their assistance and patience.



Septimus A. Rhudd

High Court Judge (Ag.)