COURT OF APPEAL OF BELIZE A.D. 2025
CIVIL APPEAL NO.10 OF 2022

BETWEEN:

THE ATTORNEY GENERAL OF BELIZE

Appellant

and

THE RT. HONOURABLE DEAN BARROW

Respondent

Before:

Hon. Mme. Justice Marguerite Woodstock Riley KC — Justice of Appeal
Hon. Mme. Justice Sandra Minott-Phillips KC — Justice of Appeal
Hon. Mme. Justice Michelle Arana — Justice of Appeal

Appearances:

Mr. Douglas Mendes KC and Ms. Iliana Swift for the Appellant
Ms. Naima Barrow for the Respondent
Mr. Godfrey Smith SC and Mr. Hector Guerra for the Interested parties, the Commissioners of the Inquiry

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2024: 16th October
2025: 30th May

JUDGMENT

[1] **WOODSTOCK RILEY KC J.A.:** A Commission of Inquiry was established by the Prime Minister of Belize on the 19th day of January 2021, pursuant to ***section 2(1)*** of the ***Commission of Inquiry Act,*** to inquire into the sale of Government Assets. Notice of the appointment was published in the Gazette on the 26th day of January 2021.

[2] The Notice provided:

"COMMISSION OF INQUIRY
SALE OF GOVERNMENT ASSETS

WHEREAS, Section 2(1) Commissions of Inquiry Act, Chapter 127 of the Substantive Laws of Belize, Revised Edition 2011 provides that the Prime Minister may, whenever it may seem desirable, issue a Commission appointing one or more Commissioners, and authorizing such Commissioners, or any quorum of them therein mentioned, to inquire into the conduct or management of any department of the public service, the conduct or management of any public or local institution, the conduct of any public officer in Belize or any other matter in which an inquiry would, in the opinion of the Prime Minister, be for the public welfare;

AND WHEREAS, there have lately been certain public allegations of improprieties and wrongdoings regarding the sale of government assets (hereinafter referred to as the "sale of government assets") with particular reference to motor vehicles;

AND WHEREAS, it is the declared policy of the Government to ensure transparency and accountability in the sale of government assets and to fully investigate all complaints of improprieties and irregularities involving such sales and processes;

AND WHEREAS, it seems to me desirable that an impartial and independent inquiry be instituted into the said allegations and that a Commission of Inquiry shall issue;

AND WHEREAS, it is further provided by Section 2(2) that every Commission shall specify the subject of inquiry and, may in the discretion of the Prime Minister, direct which Commissioner shall be chairman, and where and when such inquiry shall be made, and the report thereof rendered;

AND WHEREAS, it is further provided by section 2(3) that the Commission may also prescribe how it shall be executed, and may direct whether the inquiry shall or shall not be held public;

NOW, ***THEREFORE, I, JOHN BRICENO****, Prime Minister, in exercise of the powers vested in me by the above mentioned provisions of the Commission of Inquiry Act,* ***DO HEREBY ISSUE*** *this Commission of Inquiry and appoint* ***MR. E. ANDREW MARSHALLECK, MR. LUKE MARTINEZ and MR. MARCELLO BLAKE*** *to be Commissioners for the purposes hereinafter set out, with all the powers conferred under the Commission of Inquiry Act and authorise you the said Commissioners to inquire into the sale of government assets by the previous administration with specific reference to the following matters to wit:*

a) *to investigate the procedures and processes for the sale of government assets during the period of October, 2019, to November, 2020;*

b) *to determine with the proper procedures, practices and applicable rules and regulations were duly observed in the sale of such assets and whether all sales were made transparently;*

c) *to determine whether the proper practices for the sale of government assets were within the ambit of approved or established policy and were carried out without waste or abuse;*

d) *to determine whether any improprieties, irregularities or wrongdoings occurred in the sale of the said assets and whether there was any fraud, corruption, mismanagement, waste or abuse, in the sale of such assets and if so, to identify the persons responsible;*

e) *to identify the weaknesses in the sales processes, if any, and to recommend corrective measures to ensure transparency and accountability at all levels;*

f) *to recommend any action that may be taken against any defaulters for transgression of the established rules, practices and procedures, or for commission of any other act, impropriety of wrongdoing;*

g) *to hear and determine any other matter relating to the above."*

[3] Mr. E Andrew Marshalleck SC was appointed Chairman of the Commission. All Commissioners duly made and subscribed the required oath before Magistrate Aretha Ford on the 1st February 2021.

[4] The Respondent/Claimant, the former Prime Minister of Belize and Minister of Finance, was summoned by the Commission. The summons stated:

> *"You are hereby summoned to appear before Mr. E Andrew Marshalleck S.C., Mr. Luke Martinez and Mr. Marcelo Blake, appointed by the Prime Minister to inquire into the procedures and processes for the sale of government assets over the period of*

October, 2019 to November, 2020, to determine whether proper procedures, practices and applicable rules and regulations were observed and to determine if there were improprieties, irregularities or wrongdoings in the sale of assets at Former Formal Dining Room, House of Culture, Belize City, Belize the 15th day of February, 2021, at 9:00 o'clock in the fore noon and to give evidence respecting such inquiry and to produce all books and records in your possession touching and concerning the sale of government assets between the period October, 2019 to November, 2020, and you are required to bring with you all such documents including all documents evidencing the agreement for sale and the fixing of price for sale as well as copies of all receipts evidencing payment of the purchase prices and copies of instruments of transfer of title to the assets.
Therefore, fail not at your peril.
GIVEN under the hand of this 8th day of February, 2021.
Commissioner E. Andrew Marshalleck SC"

[5] The Respondent testified on the 15th February 2021. In January 2022, a Government of Belize Press Release indicated that the Commission had completed the inquiry and its Report submitted to the Prime Minister and Cabinet.

[6] By Fixed Date Claim Form, the Respondent (as Claimant) challenged the validity of the Findings and the Report of the Commission of Inquiry ("the COI") of which Edmund Andrew Marshalleck Jr., Luke Martinez, Marcello Blake, the 1st to 3rd Defendants in the Claim, were the members. The 4th Defendant was the Attorney General of Belize.

[7] The claims regarding the Findings and the Report of the COI were for:

i. *"A declaration that the Findings and Report of the 1st through 3rd Defendants dated 6th January, 2022 were made in consequence of a Commission of Inquiry process that was ultra vires, procedurally improper, violative of the Claimant's natural justice rights and violative of the Claimant's Constitutional right to equal protection under law; that those Findings and Report are therefore void and a nullity.*

ii. An order of certiorari quashing the Findings and Report of the Commission of Inquiry.

iii. An order or prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission of Inquiry.

iv. A permanent Injunction restraining the Government of Belize, its servants, agents, departments, authorities and officials, from implementing or acting upon the Findings and Report of the Commission of Inquiry.

*v. Redress for the contravention of the provisions of the Belize Constitution, Cap. 4, Revised Edition 2011 ("**the Constitution**").*

vi. Costs.

vii. Such further or other relief as may be just."

Judgment of the Court below

[8] On the matter coming on for trial, the Learned Trial Judge ordered:

> *"IT IS HEREBY DECLARED that the finding and Report of the 1st through 3rd Defendants dated the 6th day of January, 2022 ("the Findings and Report) were made in consequence of a Commission of Inquiry process that was violative of the Claimant's natural justice rights and violative of the Claimant's Constitutional rights to protection under law.*
>
> *AND ITS HEREBY ORDERED THAT:*
>
> *1. The Findings and Report of the Commission of Inquiry contained in the COI Report at paragraphs 12, 13, 14, 15, 16, 22, 23, 24, 26, 32, 40, 42, 66, 67, 68, 69, 70, 71, 72, 83, and paragraph106 are quashed.*
>
> *2. The Claimant is awarded the sum of $125,000.00 Belize Dollars as redress for compensatory damages and $60,000.00 Belize*

Dollars in vindicatory damages which shall be paid to the Claimant by the 4th Defendant.

3. *The 4h Defendant shall pay Fifty per cent (50%) of the costs of the Claimant to be taxed if not agreed."*

[9] The Learned Trial Judge in her written judgement notes the 1st - 3rd Defendants conceded and accepted that the Claimant was entitled to the declarations that the Defendants breached his right to natural justice and his right to protection under the law, and to an order that the Claimant be paid damages, if any, to be assessed, such damage to be paid by the 4th Defendant. (paragraph 4 of Judgment)

[10] In her written judgement, the Learned Trial Judge further held that:

> "*despite the myriad admitted failures of the COI with regard to the natural justice and constitutional rights of the Claimant … the process of the COI was not ultra vires the remit, which remit was in conformity with the statutory requirements under the law of Belize*"; (Paragraph 6 of Judgment) That the "*Court finds no actual or apparent bias on the part of the First Defendant nor the Second, and finds that the COI Report and findings were not tainted with bias." (Paragraph 7 of Judgment)*

[11] The judgment goes on to note:

> "*there is no doubt that the Claimant was denied his natural justice rights and his constitutional right of protection under the law but the Court does not order the entire COI Report be quashed*."

The Court ordered that "*those findings of the COI Report which tend to prejudice, or are adverse to the Claimant, be expunged in their entirety from the Report." (Paragraph 8 of Judgment)*

[12] Further, that the Court:

> "*would not make an order of prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission, nor order a permanent Injunction restraining the Government of Belize, its servants, agents,*

departments, authorities and officials, from implementing or acting upon the Finding and Report of the Commission." (Paragraph 9 of Judgment)

The Claimant was awarded 50% of his costs.

This Appeal

[13] The Attorney General of Belize filed an Appeal of the Order of the Honourable Madam Justice Lisa Shoman SC that:

> *"The Claimant is awarded the sum of $125,000.00 Belize Dollars as redress for compensatory damages and $60,000.00 Belize Dollars in vindicatory damages which shall be paid to the Claimant by the 4th Defendant."*

[14] The Grounds of Appeal are:

A. The Learned Trial Judge erred in fact and/or misdirected herself in finding the Claimant had provided sufficient proof of distress and injury to feelings purportedly caused as a result of the breach of his constitutional right to be heard;

B. The Learned Trial Judge erred in law and/or misdirected herself in failing to place sufficient weight on the Claimant's failure to deny in the Claim the allegations in the Commission of Inquiry's Report;

C. The Learned Trial judge erred in law and misdirected herself in failing to apply a fundamental principle of fair assessment of damages that awards made in any case should bear a reasonable relationship to awards made in comparable cases;

D. The decision is against the weight of evidence; and

E. The Learned Trial Judge erred in law and/or misdirected herself in awarding vindicatory damages, for an award of compensation for distress and injury to feelings plus the declaration of breach of the Claimant's natural justice rights and breach of the Claimant's Constitutional right to protection under the law is sufficient for the purpose of vindicating the breach of the Claimant's rights.

The Respondent's Notice

[15] The Respondent filed a Notice of Intention to contend that the Decision of the Court below be varied:

> "*By removing that part of the decision of Honourable Madam Justice Lisa Shoman holding that:*
>
> *i. There was no actual or apparent bias on the part of the First Defendant or the Second Defendant;*
>
> *ii. The Commission of Inquiry Report and Findings were not tainted with bias; and*
>
> *iii. The Appellant should only pay fifty per cent (50%) of the costs of the Claimant.*
>
> *And by granting the following orders:*
>
> *i. A declaration that the Findings and Report of the 1st through 3rd Defendants dated the 6th day of January 2022 (the Findings and the Report") are void and nullity.*
>
> *ii. An order of certiorari quashing the said Findings and Report of the Commission of Inquiry.*
>
> *iii. An order or prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission of inquiry.*
>
> *iv. A permanent Injunction restraining the Government of Belize, its servants, agents, departments, authorities and officials, from implementing or acting upon the Findings and Report of the Commission of Inquiry.*

v. *Costs.*

vi. *Such further or other relief as may be just."*

[16] The Grounds on which the Respondent relied are as follows:

(i) The Learned Trial Judge erred in law in holding that, as the First Defendant was a lawyer it was for the Respondent to prove that in acting as a commissioner, he was not acting with independence and integrity and in so holding,

(a) the Learned Trial Judge erred or was misconceived in law in failing to distinguish between actual bias and apparent bias;

and

(b) the Learned Trial Judge failed to have any, or any sufficient, regard to the real danger of bias which might arise from the First Defendant Commissioner's:

(1) appointment by the Prime Minister, during the term of the Commission, to a paid post;

(2) historic and continued legal representation of the Prime Minister and statutory bodies; and

(3) Public statement of "trust" and "support" in the current Government.

(ii) The Learned Trial Judge erred in law in holding that the comments of the Second Defendant made during the life of the Commission had to impugn the Claimant in a particular manner to taint the commission with bias; and in so holding,

The Learned Trial Judge failed to have any, or any sufficient, regard to the real danger of bias which might arise from the "decisive language of concluded finding" used by the Second Defendant.

(iii) The Learned Trial Judge erred or was misconceived in law in holding that the views of the general public could be disregarded in assessing the possibility of bias; and in so holding, the Learned Trial Judge-

misconstrued or failed to give full effect to the fact that the "fair-minded observer" is deemed to have access to all facts that are capable of being known by members of the public generally, and instead imbued the fair-minded and informed observer with possession of more facts and greater faculties than the general public.

(iv) The Learned Trial Judge erred in law in finding that the Commission of Inquiry Report and Findings were not tainted with bias; and in so holding, the Learned Trial Judge-

(a) failed to have any, or any sufficient, regard to the context and all surrounding circumstances.

(b) failed to have any, or any sufficient, regard to the possibility that the Commission was prevented from making an objective determination about the sale of government assets by the previous administration.

(v) The Learned Trial Judge erred in law in holding that the Respondent was liable for half of his costs in the absence of a

finding that he acted unreasonably in filing the claim or in the conduct of his claim.

Appellant's Submissions

[17] The Appellant in submissions accepts the circumstances in which an Appellate Court will set aside a Trial Judge's decision on damages. Citing ***Guyana Sugar Corporation v Dukhi*** [2016] CCJ 17AJ (GY), where the Caribbean Court of Justice (CCJ) noted the test for setting aside an award of damages as follows:

> *"[29]… An award of damages will be subject to appellate review where the trial judge made an error of law or the quantum of damages is so disproportionate to the sum claimed that it appears to be entirely incommensurate with the nature and extent of the loss suffered. This test is routinely applied in Caribbean jurisprudence as illustrated by the decision of* ***Heeralall v Hack Bros*** *from the Court of Appeal of Guyana."*

[18] The ***Guyana Sugar Corporation*** case quoted Crane J.A. in ***Heeralall*** [1977] 25 WIR 117 in paragraph 30, which stated:

> "*The Principles this appellate court will apply in an appeal on a question of quantum of damages are clear and well-established. Because a finding on damages is generally so much a matter of speculation, of estimate and of individual judicial discretion, this court will not increase or decrease an award only because every member or a majority of it would have awarded something more or something less. If the judge in making his assessment applied a wrong principle of law, we can interfere, for example, if he took into account some irrelevant factor or left out of account some relevant one or gave too much or too little weight to it. But even if this court is unable to locate, isolate and identify any specific error of law, it can still interfere. If we are satisfied that the award at first instance is in one direction or the other plainly disproportionate to or not reasonably commensurate with the gravity of the injuries suffered and the consequences entailed, then we may conclude that somewhere along the line there was a faulty estimate or an error of judgment, sufficient to justify our interference on the ground of excess or insufficiency. We may think the award rather on the high side and still not interfere; or we may think it rather on the low side and still not interfere. In other words, the award must be too much on the high side or too much on the low side*."

[19] The Appellant noted a similar approach was recently applied by this Court in ***Abelardo Jose Mai v Edgar Nissani Arana*** **-** Civil Appeal No. 33 of 2018. In ***Aberlardo,*** it quoted the English Court of Appeal case, ***Flint v Lovell*** [1934] All ER Rep 200 that said:

> "*To justify reversing the trial judge on the amount of damages it will be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damages to which the plaintiff is entitled".*

[20] While acknowledging those parameters, the Appellant submits that the Learned Trial Judge made *"significant errors in law which were compounded in effect and arrived at a perverse conclusion.*" and that "*By any measure, the sums awarded by the learned trial judge were exorbitant*". In oral submissions, the term repeatedly used was that the sums were 'excessive'.

Grounds A, B and D:

A. The Learned Trial Judge erred in fact and/or misdirected herself in finding the Claimant had provided sufficient proof of distress and injury to feelings purportedly caused as a result of the breach of his constitutional right to be heard.

B. The Learned Trial Judge erred in law and/or misdirected herself in failing to place sufficient weight on the Claimant's failure to deny in the Claim the allegations in the Commission of Inquiry's Report.

D. The decision is against the weight of evidence.

[21] The Appellant outlined the authorities that support compensation is a form of redress to which a victim of a violation of constitutional rights is entitled, not limited to deprivation of liberty, or property unconstitutionally acquired by the state, but for

compensation, distress and inconvenience suffered as a consequence of the breach. While extensively reviewing authorities, the Appellant gave no submissions to support the sum awarded being "exorbitant" or so disproportionate that it would merit the Appeal Court varying the assessment.

[22] The Appellant admits and reproduces in submissions (Paragraph 20, page 365 of Record) that the Respondent gave evidence as follows:

> *"Mr. Barrow gave evidence of the shock he experienced when he read the criticism of him in the Commission's report, given that he had no indication from the Commission that they were harbouring the view that he was guilty of misconduct or criminality. He was appalled that he was embarrassed in this way. (para 18-20 of his second Affidavit). The extensive coverage which the report received caused him severe anguish (para 21). He assumed that he suffered damage in the eyes of his friends, colleagues and clients (para 22). He had to explain to his daughter why he was still being attacked when he had left public life (para 23) and to ask associates in Belize and abroad not to be swayed by the report (para 24). His treatment at the hands of the Commission has caused him much private and professional harm and humiliation, he claims. (para 26) "it is as though I have been found guilty of crimes without ever having been charged." (para 27)*

[23] The Learned Trial Judge extensively examined the distress and injury claimed in paragraphs 14, 15, 16, 17, 18, 19, and 23 of her judgment. As noted by the judge in paragraph 23, "*it is noteworthy that the Defendants did not attempt to challenge or controvert the Claimant's evidence in this regard*".

[24] The Trial Judge's review notes:

> "*What was the distress suffered by the Claimant and the resulting injury? The Claimant provides this Court with ample evidence in his First Affidavit dated 19 June 2022; in his Second Affidavit dated February 25, 2022; and his Third Affidavit dated March 10, 2022 of the impact on him, and resulting injury to him, of what the Claimant's Counsel calls the "blazingly public nature of the Commissions' Inquiry." In a Press Release issued by the Government of Belize and dated January 11, 2022, the COI's "key*

findings" were detailed and the Press Release was disseminated by the media and widely discussed by the general public.

The Claimant provides evidence that "he became extremely distressed" at what the Report said about him. He also says that he was "greatly shocked when he heard and read what the Commission said about me in the Report".

"*The Claimant also deposes that he was "appalled that the Commission… could ambush me in the manner of the Report. The Commission savaged me to the point of saying I had committed criminal breaches of the law." He goes on to say that he was "utterly blindsided by the Report and felt that it was findings and publication without my ever having had a chance to make representations to protect my name, character and reputation, constituted a blatant violation of my fundamental constitutional right to protection of the law*."

"*In his Second Affidavit, the claimant described that the* "*Report of the Commission, extensively covered by the media in Belize and the subject of a torrent of public discussion, has caused me severe anguish*."

[25] In the face of the plethora of evidence presented, it is inconceivable that the Appellant could seriously assert there was no sufficient evidence of distress and injury to feelings. Notably, though this was a Ground of Appeal, submissions presented no substantive argument in support.

[26] The Appellant's submission addressing quantum was that in assessing the level of the award to which he is entitled, the Learned Trial Judge failed to place any weight on the fact that nowhere in his evidence did the Claimant seek to refute the underlying findings of fact on which the criticisms are based. Asserting that the Respondent had premised his claim on the assumption that he had answers to these criticisms, which he would have provided had he been asked, but he did not actually provide those answers. The oral submission before us was that the level of distress would be more acute if untrue. The Appellant persisted with this submission, which had been made in the High Court, before the Court of Appeal and still with absolutely no authority in support. The Respondent submitted that the Appellant's insistence *"suggests that the award of vindicatory damages made has not emphasised to the*

Appellant the importance of the Respondent's constitutional rights, the gravity of the breach nor deterred further breaches".

[27] As the Learned Trial Judge noted in the case of ***Patt v Edmund Andrew Marshalleck et al,*** and with which we agreed in ***Civil Appeal No. 9 of 2022 Attorney General v Patt****,* any notion that the Court should find that the Claimant needed to, or should refute the findings of the COI Report, as a basis for the assessment of an award of compensation for what the 4th Defendant has already conceded is "*for the distress and inconvenience suffered as a consequence of the failure to accord him a right to answer the criticisms levelled at him*" was rejected.

[28] In her decision in this case, the Learned Trial Judge made the same finding:

> "*It can be no part of the exercise of this assessment of damages, to expect answers to anything contained in a COI Report that has denied the Claimant's constitutional or natural justice rights, nor should a judge take note that the Claimant has not done so. There is no onus in law that obliges the Claimant to provide answers, whether in denial or in confirmation to the very Report issued by a Commission, which the 4th Defendant has already accepted, breached the Claimant's constitutional rights*." (Para 31 of Judgment)

[29] As noted, there was ample evidence to support the decision of the Trial Judge in this regard, there is accordingly no merit in Grounds A, B and D of the Appeal.

Ground C

The Learned Trial Judge erred in law and misdirected herself in failing to apply a fundamental principle of fair assessment of damages that awards made in any case should bear a reasonable relationship to awards made in comparable cases.

[30] The Appellant's submission is correct that in assessing an award, the Learned Trial Judge should have regard to awards made in other comparable cases and ensure

that there is some level of parity with cases. However, the Appellant has failed to show that this was not done.

[31] The Appellant submits that the award of TT$125,000.00 in ***Crane v Rees*** [2000] 60 W1R 409 to Justice Crane is a benchmark because of the similarity of circumstances and the right infringed, and that in the year 2000, an award of TT$125,000.00 was the equivalent of US$20,000.00, therefore is equal to BZD$40,000.00.

[32] However, that was over twenty (20) years ago, and the Court also noted in ***Crane,*** "*the extent of a victim's suffering and distress will differ from case to case. The Court therefore must, be sufficiently discerning in its assessment of the grief and agony of the particular victim*."

[33] Counsel makes the point that an award should be for the distress suffered as opposed to an award for an attack on his reputation. Yet as the Learned Trial Judge noted in her judgement, and the Appellant also does admit in his submissions, awards in defamation cases may also be used as a guide. Further, "*the level of distress he experienced is no doubt influenced by the reputational damage he suffered"*. It should be accepted that an attack on your reputation is a cause of distress.

[34] The suggestion by the Appellant that an award should be in the range of BZE$40,000.00 to BZE$50,000.00, even on the cases cited, is not sustainable. Before us, Appellant's counsel conceded that with regard to ***Crane***, *"the $40,000 Belize in the year 2000 would have to be updated having regard to inflation and so on*." The Trial Judge noted several cases she considered cited by both parties in reaching her assessment. ***Bevans v Briceno*** (Claim 771 of 2020), an award for defamation totalling $90,000.00; ***Barron MP & Ors v. Collins MP*** ([2017] EWHC 162), award of $128,900.00; ***Sam Maharaj v. Patrick Agustus Mervyn Manning*** TT 2019 HC 26**,** award of US$18,450.00 for distress and inconvenience and

US$88,560.00 for vindicatory damages for a judge; ***Melissa Belizaire Tucker v. Chief Executive Officer, the Minister of Education & the Attorney-General*** (Claim 305 of 2014 and claim 199 of 2015) award of BZD$80,000.00 were noted.

[35] As accepted by the authorities, the Appellant provided, the Trial Judge's assessment here would not be set aside unless based on an error of law or unreasonably high . I do not find that to be the case.

Ground E – Vindicatory damages

The learned trial judge erred in law and/or misdirected herself in awarding vindicatory damages, for an award of compensation for distress and injury to feelings plus the declaration of breach of the Claimant's natural justice rights and breach of the Claimant's Constitutional right to protection under the law is sufficient for the purpose of vindicating the breach of the Claimant's rights.

[36] The Appellant submitted that an award of vindicatory damages was not appropriate in the circumstances of this case. That an award of compensation for distress and personal injury, plus the declaration of breach of the Respondent's constitutional right to the protection of the law, was sufficient for the purpose of vindicating the breach of his rights. That while there was a breach of his right to be heard, there was no suggestion of a lack of good faith or a deliberate attempt to injure him. This was not a case of reprehensible conduct of the state egregious enough to warrant a monetary order in addition to the agreed declaration and damages.

[37] The Appellant gave an extensive review of the law on vindicatory damages, notably in ***Alphie Subiah v Attorney General of Trinidad and Tobago*** [2009] 4 LRC 253. The Privy Council again explained the approach to assessment of damages:

> *"[11] The board's decision in A-G v Ramanoop [2005] 4 LRC 301 at paras 17- 20 and Merson v. Cartwright [2006] 3 LRC 264 at para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and*

*Tobago and … The Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. That's redress may, in some cases, be afforded by public judicial recognition of the constitutional rights and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, Merson, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features that may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1997] 2 All ER 762 at 775) for the allowance of aggravated damages to be separately identified**. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question, to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression…"** *(Emphasis added)*

[38] From our apex Court, the CCJ, in ***Titan International Securities Inc. v Attorney General of Belize***, [2018] CCJ 28 AJ, in paragraphs 56 – 60, the CCJ cited the Bahamian case, ***Merson v Cartwright and Another*** (2005) 67 WIR 17 in paragraph 57, which said:

"*In accordance with established authority, the purpose of a vindicatory award was not a punitive purpose. The purpose was to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life free from unjustified executive interference, mistreatment or oppression. The sum awarded to achieve that purpose would depend upon the nature of the*

infringement and the circumstances relating to that infringement. It would be a sum at the discretion of the trial judge."

The principle in ***Titan*** continued in paragraph 58 and ***Titan*** quoted the Privy Council in ***James v Attorney General of Trinidad and Tobago*** (2010) 78 WIR 443 *"24. ……. the constitutional dimension added an extra ingredient. The violated right required emphatic vindication."*

Titan continued and stated:

> ***"****The approach [in the present case] was therefore to assess the nature of the breach in terms of the particular facts of the case and to decide whether an additional award was required which would not only vindicate the rights of the party but would also deter the authorities from engaging in such conduct."*

The Court in ***Titan*** considered how the search had been conducted and the manner of the police officers during the operation, an award of vindicatory damages was appropriate. That award would be in the sum of BZD$100,000 (see [56]– [60] of the CCJ judgment.

The CCJ in ***Titan*** continued in paragraph 58 and quoted the Privy Council case of ***James v Attorney General of Trinidad and Tobago*** (2010) 78 WIR 443:

> *"25. …. a violation of someone's constitutional rights will commonly call for something more than a mere statement to that effect. This is required in order to reflect the importance of the constitutional right and the need for it to be respected by the state authorities. A risk of the devaluation of such rights would obviously arise if the state could expect that the most significant sanction for their being flouted was a declaration that they had been breached …"*

[39] In ***Titan****,* the Court recited the factors it took into account in deciding an award of vindicatory damages, leading to the conclusion that the police officers involved acted in a very high-handed manner during the operation, and this justified an award of vindicatory damages of BZD$100,000.00. A copy of the search warrant was not left with Titans officials …… Items were taken which were not relevant to the

Request from the US Government …. A search was conducted in an unreasonable and excessive manner since there was no sifting of the records to comply with the specific Request from the US …… No inventory of the items taken was left with Titan… Titan's attorney was denied entry into the premises during the search.

[40] In the instant case, the Trial Judge set out her conclusions on the issue of vindicatory damages; Noting, the Appellant conceded in submissions – *"What the Report does is to accuse him of "an unbridled exercise of power" (*para 12); of "handpicking purchasers" (para 13); selling to "favoured persons" at less than market value (para 13); "waste and abuse" (para 14); facilitating the purchase of vehicles by persons with political connections but using the names of other persons to conceal their involvement (para 15); breach of the law which very likely constituted criminal offences (para 2); favouritism towards the President of the Court of Appeal in the sale of a vehicle far below market value (paras 67-72):

> "*It is in all the circumstances, appropriate to award vindicatory damages in this case".* Concluding – *"There is, in the admitted and attendant circumstances of this claim, a need to emphasize the importance of constitutional rights and the gravity of the breach caused to the Claimant's rights and to deter future breaches. The sum of $60,000.00 Belize Dollars is awarded to the Claimant as vindicatory damages, which I believe meets the justice of the case*."

[41] The creation, power and actions of a Commission of Inquiry are important. As provided by the Commissions of Inquiry Act, the Prime Minister may issue a Commission to inquire into (a) the conduct or management of any department of the public service; (b) or the conduct or management of any public or local institution; (c) the conduct of any public officer of Belize; (d) any other matter in which an inquiry would in the opinion of the Prime Minister, be for the public welfare.

The Trial Judge's decision was that the conduct of the Commission warranted an award in addition to compensation for the Claimant's distress. In the course of her judgment, terms justifiably used by the Trial Judge include "*the language used by the COI Report is stinging, pungent even*, *beyond infra dig*". In circumstances of the

extremely serious statements made regarding the Respondent without giving him the opportunity to respond, a breach that was accepted by the Defendants, it cannot be said that the Trial Judge was wrong in her determination that vindicatory damages were justified, nor wrong in her assessment of quantum. It underlines the importance of the need to respect constitutional rights.

[42] In all the circumstances, the Appellant's Appeal is dismissed with costs to the Respondent.

THE RESPONDENT'S NOTICE

[43] As noted in paragraph 15 hereof, the Respondent sought a variation of the Trial Judge's decision on bias and costs and resulting orders.

The Respondent submits that the literal meaning of the words used by the Learned Trial judge in her decision makes clear that she failed to appreciate the distinction between apparent and actual bias. The Trial Judge stated:

> *"[81] the First Defendant Commissioner is a senior attorney at law, not a judge, but one whose independence and integrity is ascribed to him as credit, and whose unmooring from that code of conduct, must be proven by the Respondent who alleges bias. I do not find that the response of the Chairman to the remarks of his fellow Commissioner, both of which were made to the media during the lifespan of the COI, rises to the level of being bias. Regrettable, perhaps, but this is not what this Court is asked to assess. Regardless of the views of the media or even the general public, who may not be in the possession of all the relevant facts, and who may not have the faculties required for the fair-minded and informed observer, I do not find that the fair-minded and informed observer would conclude that the Chairman Commissioner was biased against the Respondent."*

The Learned Trial Judge noted:

> "*I cite with favour, those submissions made for the Attorney General in this case as follows: "The proposition that the fair*

> *minded and informed observer would conclude there is a real possibility that the First Defendant would be biased against the Claimant is one that is not accepted lightly. Practically all of the proven facts on which the Claimant relies establishing the First (sic) Defendant Is his political opponent or is associated with his political opponent to such an extent as to satisfy the test of bias relate to the discharge of the First Defendant's functions as an attorney at law. The observer would assume that in doing so the First Defendant acted with the independence and integrity which the code of conduct by which he is bound expects of him*."

[44] The Respondent further submits that the Chairman of the Commission was not a judge and does not benefit from the presumption of judicial impartiality and integrity attributed to a judicial officer or a high public office. To elevate an attorney to the standing of judicial officer belittles the office and oath of a judge. Not only was the Chairman of the Commission in the case at bar not a permanent position, but he was also, during the tenure of the Commission, a practising attorney representing the Prime Minister and the Government in ongoing litigation.

[45] The Respondent maintains that the Chairman of the Commission's continued legal representation of the Prime Minister and the Government in ongoing litigation during the tenure of the Commission (combined with all the other facts) increased the appearance of bias. The smaller the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the stronger the objection will be.

[46] The Commission has sought to equate an attorney's code of conduct with that of the oath of judicial officers and other holders of high public office. The Respondent submits that such an equation is, at best, a stretch.

[47] With regard to the Respondent's allegation of the appearance of bias against the other Commissioner was Commissioner Martinez's statements of the need to put in place "***mechanisms to guard against abuse, etc.***".

On 15th April 2021, during the tenure of the Commission and at the scheduled sitting, Commissioner Martinez read a statement on behalf of the Public Service Union ("**PSU**") when he said the following:

> a. *"it is time for all the key players in the Ministry of Finance to be held financially and criminally responsible for the sale of government assets.*
>
> b. *enough is enough - we can no longer continue to stand the stench of the pit of corruption that exists when it comes to the sale of the people's assets.*
>
> c. *The discretionary power of the Minister of Finance and the Financial Secretary must be limited to mechanism to guard against the abuse be put in place forthwith.*
>
> d. *The PSU called for the Commission of Inquiry to investigate and address wrongdoings. We signed up in good faith with a view of exposing and holding our wrongdoers accountable. We did not sign up for a political show that will be limited to name calling, political and grandstanding.*
>
> e. *The government of the day has made a mockery of the Commission of Inquiry when it is in the middle of the inquiry the Prime Minister himself approves and unabashed defends the sale of the people's assets without an open and transparent bidding process and pittance, some would say, nickel prices."*

[48] The Respondent disagrees with the Commission's assessment of the statements made by Commissioner Martinez as being made "*against the current administration, but not the previous one or against the Respondent himself*". He asserts that, quite apart from the fact that at the time of his statement, the current administration had been in government for less than six (6) months, Commissioner Martinez's statement itself made clear when he was talking about the current government and the previous one.

[49] The Respondent maintains that Commissioner Martinez's statement made during the tenure of the Commission was undoubtedly reflective of his conclusion of abuse before the determination of the Commission and gave rise to the real danger of bias.

[50] The Respondent submitted having regard to the context and all surrounding circumstances, the Learned Trial Judge ought to have concluded that there was a real possibility that the Commission was prevented from making an objective determination about the sale of government assets by the previous administration; and the decision of the Learned Trial Judge should be varied to find that the Finding and Report were tainted with bias and as such void and a nullity.

[51] When the matter first came before the Court of Appeal, the Respondent's Notice had not been served on the Commission and in circumstances where the findings of the Learned Trial Judge on bias and their Report were being challenged, the Respondent was required to serve and the Commission given the opportunity to respond.

[52] The Commission submitted:

> *"On proper analysis, the learned judge was not requiring proof of actual bias. Placed in its proper context and within the overall reasoning of the court, it is clear that proof refers to the claimant's burden of proving the claim to the required standard, i.e. on a balance of probabilities. That burden includes rebutting the presumption of integrity afforded to the Chairman by virtue of his position as a senior attorney. Under the test for the apparent bias, the fair-minded and informed observer would assume that the Chairman, as a trained attorney, would be able to form his own views and be capable of detaching his mind from extraneous considerations."*

[53] By requiring the "unmooring" from [The Chairman's code of conduct as an attorney] to be proven, the Court is merely saying that, to establish apparent bias, the Claimant needs to show something more to unsettle the fair-minded observer's assumption that the Chairman would be faithful to his oath and the code of conduct

of the legal profession. The judge did not mean, as the Respondent suggests, that the Claimant needed to prove actual bias. The standard of the fair-minded and informed observer was manifestly the central pillar of her reasoning.

[54] Further submitting, there was no error in the Learned Trial Judge's treatment of the notional observer. She did not go so far as to imbue the observer with any "insider" knowledge, but rather correctly ascribed to him a reasonable working grasp of the role and training of the attorneys. Further, all the facts referred to in her decision were all publicly available.

[55] That within the scope of her fair-mindedness, the observer is also expected to recognise the significance of her decision-maker's profession when evaluating apparent bias. As elucidated by Jamadar JCCJ in ***Manzanero v the Queen*** [2020] CCJ 17:

> *"such a hypothetical observer is assumed to know that a professionally trained judicial officer is ordinarily acknowledged to be impartial, independent, and capable of putting aside from their deliberations, evidence heard and/or findings made in prior proceedings in the same case, and deciding the main case before them only on the evidence properly admissible in the main proceedings. In cases of disqualification (as here), the inquiry is not whether there is or was in fact bias (conscious or unconscious) prejudice, or prejudgment - it is whether a reasonable, fair-minded, and properly informed person would apprehend that there could be, such as to result in a closed judicial mind. Thus, a judge may in fact be impartial in circumstances that nevertheless create a reasonable apprehension of bias, prejudice, or prejudgment*."

[56] It was further submitted on behalf of the Commission that, in line with various authorities, allegations of apparent bias against an attorney will be assessed in light of the corresponding code of conduct and the nature of his/her training. In Belize, attorneys are bound to scrupulously preserve [their] independence of judgment in the discharge of their professional duties. The informed observer will be expected to know of the legal traditions and culture of the jurisdiction and their ability to exclude extraneous considerations. The Learned Trial Judge was, therefore,

justified in attributing substantial weight to the Chairman's status as a senior attorney, who is bound by an oath to uphold the rule of law.

[57] Further, the connections to the Prime Minister are too remote to objectively establish an appearance of bias. The private company has no connection to the nature and mandate of the Commission. Additionally, the allegation that the Chairman serves as the personal attorney of the Prime Minister is factually inaccurate. As clarified in paragraph 67 of the Commission's affidavit, the Chairman is not the Prime Minister's personal attorney. He acted as counsel for the Prime Minister in Claim No. 771 of 2020 at the request of Messrs. Courtney Coye LLP, who remained the Prime Minister's personal attorneys of record. The Chairman has only provided assistance to Courtney Coye LLP as counsel on specific occasions when requested. These facts further support the position that the Claimant's legal assistance is insufficient to displace the presumption of impartiality.

[58] The Commission submitted that in the case at bar, Commissioner Martinez gave one statement that spoke broadly to the importance of the Commission of Inquiry and public accountability. Moreover, any incriminating or reproaching statements were made against the current administration, not the previous one or against the Respondent himself. Any allegation of apparent bias on this statement alone can only be characterised as an anxious and highly sensitive suspicion.

[59] Overall the submission was that the Respondent has failed to provide cogent evidence to rebut the presumption that the Chairman would have faithfully adhered to his code of conduct as a senior attorney. The "decisive" character of the impugned statement by Commissioner Martinez has been misdirected and overblown.

DISCUSSION

[60] The contentions before us were focused on apparent bias. Important authority on the matter of apparent bias comes from the Caribbean Court of Justice (CCJ) in

Timothy Walsh et al v Stephen Ward et al [2015] CCJ 14 (AJ) at paragraphs 91, 92, 95 and 98 of the judgment, the Court stated that:

> "[91] *On the substantive issue, the Court of Appeal decided that the matters adduced by Mr. Gale QC did not satisfy the substantive test for recusal. The court premised its analysis and its decision on the presumption of impartiality of judges. According to the court, because of the professional background required for the appointment, judges are to be assumed to be persons of 'conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances'. This presumption, it was said, carried 'considerable weight' and it was not to be assumed that a judge would allow personal hostility to colour his decision. The court cited several cases, including* ***R v S (RD)****;* ***Helow v Secretary of State for the Home Department; Rees v Crane****; and Section 7 of the Supreme Court of Judicature Act, which outlines the requisite qualifications for appointment as a judge.*
>
> *[92] The court also referenced the House of Lords decision in* ***Porter v Magill*** *that "a judge must recuse himself or herself if a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased. In dismissing the application as being "entirely without merit", the Court of Appeal held that it would be impossible for the fair-minded and informed observer to conclude, having regard to the facts, that there was a real possibility of bias on the part of Moore CJ (Ag) and Mason JA in the present case. While acknowledging that the transcript reveals "vigorous exchanges between the court and counsel", the court held that those exchanges were nothing more than the fair-minded and informed observer would expect….*
>
> *…*
>
> [95] *the law on apparent bias is well settled. In determining whether, in instances such as these, a judge is disqualified from hearing a case, the reviewing court must place itself in the position of an objective and fair-minded observer fully informed of the facts. The pertinent question is whether such an observer would conclude that there was a real possibility of bias.* ***What matters is not so much***

> ***the reality of bias or prejudice on the part of the judge but its appearance. This test is aimed at preserving confidence in the administration of justice and not at censure of the judge.*** *If an objective by-stander thought that there was a real (as opposed to a fanciful) possibility a judge might be biased, justice delivery is compromised.* ***This remains the case even when the judge himself, and his peers, might confidently consider that the judge was a competent and impartial judge. What is at stake is not the integrity of the judicial officer but that of the administration of justice.*** *It is important to stress that for a judge to recuse herself, or be asked to do so, does not reflect negatively on the probity or competence of the judge.* (emphasis added)
>
> …
>
> [98] *The Court of Appeal justified its decision against recusal by heavily stressing the presumption of impartiality of a judge. This presumption is not an impenetrable barrier to the making of a successful application that a judge should be disqualified on account of apparent bias. Like all other presumptions, it is rebuttable. The professional status of a judge is only a factor that the informed lay observer will consider."*

[61] The case of ***Walsh*** clearly indicated that the consideration is what the fair-minded observer would conclude. Baroness Hale in ***Gillies v Secretary of State for Work and Pensions*** [2006] UKHL 2 commented, it is not enough to show that those in the know would not apprehend any bias, the test is not concerned with matters from the viewpoint of a reasonable judge but from that of a reasonable lay observer, who is "*not an insider*". Baroness Hale said:

> *"The 'fair-minded and informed observer' is probably not an insider (i.e. another member of the same tribunal system) otherwise she would run the risk of having the insider's blindness to the faults that outsiders can so easily see. But she is informed. She knows the relevant facts. And she's fair-minded. She is, as Kirby J put in* ***Johnson v Johnson*** *(2000) 200 CLR 488, 'neither complacent nor unduly sensitive or suspicious'."*

[62] The Learned Trial Judge did put too great an emphasis on the fact that the Chairman was a senior attorney at law. It is not agreed that there is a presumption to be

ascribed to an attorney at law, or, as was submitted on behalf of the Commission, a presumption of integrity afforded to the Chairman by virtue of his position as a senior attorney. The Trial Judge's statement that 'unmooring' the Chairman from the 'independence and integrity' ascribed to him and must be 'proven' by the Respondent who alleges 'bias' is a misapprehension of the law on apparent bias. The statements in ***Walsh v Ward*** are an important guide. Apparent bias does not require proof of actual bias. It can be established on facts that would lead a fair-minded observer to conclude there was a real possibility of bias. It is not an assault on the integrity or competence of the actual judge/individual but preserving confidence in the integrity and fairness of the administration of justice. As with a judge, professional status is only a factor that the informed lay observer will consider. So too with an attorney.

[63] The case of ***Manzanero*** and the dicta of Jamadar J was cited. This was related to judge-alone trials and the hearing of a voir dire and was not analogous. However, his statement that *'a judge may in fact be impartial in circumstances that nevertheless create a reasonable apprehension of bias, prejudice or prejudgment'* is instructive.

[64] The Commission highlighted the attorneys' code of ethics that would ensure/ require fair conduct. The Respondent's response is valid, pointing out the code of ethics requirements on conflict of interest. However, a conflict of interest is not created without more by a member of a commission who is an attorney at law having been engaged in unrelated litigation by the person appointing him to the Commission. Of concern as a potential conflict of interest, were it ongoing immediately before or at the time of the COI, would be Mr Marshalleck's membership of the Executive of the PUP.

[65] However, in relation to bias, the Commission raised the point of waiver. The Respondent knew the nature and purpose of the Inquiry, which is the very reason used to support why a Salmon letter should have been sent. The purpose of the

Inquiry was clearly disclosed in the recitals of the Notice appointing the Commission that there were '*allegations of improprieties and wrongdoing regarding the sale of government assets … with particular reference to motor vehicles'*. The Commissioners were authorised *'to inquire into the sale of assets by the previous administration'.* The Respondent was the head of the *'previous administration'* the Commissioners were to inter alia determine whether any improprieties, irregularities or wrong doings occurred in the sale of the said assets and whether there was any fraud, corruption, mismanagement, waste or abuse in the sale of such assets and if so to identify the persons responsible. The Respondent notes in his Third Affidavit:

> *"I was, as the Commission and the world knew, the Prime Minister of the Government of Belize and the Minister of Finance during the period covered by the Inquiry. Perforce, then, the Inquiry had to involve an investigation into my stewardship of the Ministry of Finance and Government of Belize; into whether, in my role as Head of the Ministry, I was responsible for 'any fraud, corruption, mismanagement, waste or abuse."*

[66] Going into the Inquiry, the Respondent would have been aware of essentially all facts on which he subsequently relies to claim bias. That the Chairman was a known supporter of the government that appointed him to investigate the actions of the previous administration, of which he was Prime Minister and Minister of Finance. Asked during the hearing of the Appeal if there had been a request for the Chair to recuse, the response of Counsel was that he did not know the nature of the Commission and the accusations or allegations being made against him. Further that he was the first to appear before the tribunal and would not be aware and was not made aware of accusations made subsequently.

[67] I can see some merit in the submission of waiver, the Respondent was aware, as the Notice of its establishment clearly disclosed, that the Commission, headed by someone he knew for some time and considered to be a supporter of his political opponent, was looking into allegations against his administration. However, the Trial Judge did consider the issue of waiver in depth, relying on the principle that a waiver should be clear and certain and with full knowledge of what was being waived. In

addition, some matters alleged by the Respondent to show bias occurred during the tenure of the Commission. It cannot, therefore, be said that the Trial judge was plainly wrong in her determination that there was no waiver by the Respondent of a claim of bias.

[68] Having determined that the Trial Judge in her statements did show a misapprehension of the law on apparent bias, it remains for us to consider independently the allegations of bias. The allegations as they relate to the Chairman were set out in the Respondent's Notice reproduced here at paragraph 16(i) (b) (1), (2) & (3). They concentrate on the Chairman's appointment to a paid post at the Belize Electrical Ltd, his legal work representing the Prime Minister who appointed him as Chair of the COI, and a public statement of "trust" and "support" in the current Government. Reference is made in submissions to his 'known support of the PUP' but not in the Notice. In any event, five years or so elapsed between his membership of the Executive of the PUP and his appointment to the Commission by the head of that party (then the Prime Minister). That many years could be considered sufficient time to dilute the effect of that membership to relative insignificance in the mind of the fair-minded observer. A point also acknowledged in ***Walsh***, that time having elapsed is a consideration. I do not find that there is sufficient presented to conclude that an informed observer with this information would reasonably conclude there is a real possibility of bias. The case of ***Amory v Sharpe*** (Eastern Caribbean Court of Appeal) relied on by the Respondent, does have distinguishable facts, in that it was a sole Commissioner and the staff of the commission, with one exception, was found to be infected with apparent bias, and there were several examples to support this. Similarly, in ***Mitchell v Georges*** 2014 UKPC 43, the finding of apparent bias was supported in several ways, in particular the 'strong language' in the Interim Report and the Salmon letter. The area of concern for me is the language in the COI Report, but all of which has now been struck out. The statements of Commissioner Martinez complained of were inappropriate during the term of the inquiry and could lead to the determination that he had prejudged what the Inquiry should be looking into. Considering the contents of the Report, which contain unnecessarily, as the trial

judge noted, 'pungent' language, and the statements of Commissioner Martinez, it could be possible to support a determination of apparent bias. However, based on the determination of how the Report should be addressed, a definitive finding in that regard will not be necessary.

Quashing the Report

[69] The Respondent's submission is that the entire Report should be quashed. I take note of the submission by the Respondent that the 'Commission was prevented from making an objective determination about the sale of Government Assets.' The Attorney General's submission is that such a quashing order, even in a case where a declaration that natural justice was breached is not appropriate except in exceptional circumstances on the basis that an investigative Report has no legal consequences and refers to the UK case of ***Clegg v Secretary of State for Trade and Industry*** [2002] EWCA Civ 519.

[70] The Trial Judge on the issue of quashing the Report found:

> "[85] - *This Court has no difficulty finding that this is an exceptional case in which natural justice was denied, but also in which the Claimant's constitutional rights were infringed, and therefore, those paragraphs and sections of the COI Report and the findings therein which are affected by the serial denials of the rights of this Claimant should be quashed. A partial quashing order will therefore be made. I agree with the Defendants that there are parts of the Report which are "free standing" and can coherently survive removing references to the Claimant.*
>
> [86] - *The Trinidadian case of* ***Garcia v. Ibrahim et al[90]*** *involved a Commission of Inquiry is helpful. Ramcharan J. concluded that the Claimant was not provided with a proper opportunity to answer the proposed findings in the Commission of Inquiry's Report, resulting in a breach of natural justice, and held the findings of the Commission unreasonable. There was no discussion regarding severance per se, but Ramcharan J concluded by saying:*
>
> > *"186. It is to be noted that most of the recommendations and findings of the commission do not concern this Claimant and*

> *are unaffected by this decision. Further, even some of the recommendations with respect to the Claimant may have some merit, and may in fact have remained the same, even if the Claimant had been notified of all the proposed findings in the June 22 letter.* ***However, by not allowing the Claimant to respond to several serious and damning allegations, the Commission's final report is contaminated to that extent.***
>
> *187. Having said that, the court takes judicial notice of the length of time and the amount of resources spent in the Commission, and notes that serious and genuine concerns have been raised by the report.* ***The Court therefore must make it clear that the report in of itself is not rendered nugatory by this decision, nor any its recommendations, except as insofar as they deal with the Claimant, and those matters of which he was not given full notice.*** *What action, if any, is taken with respect to the report, is of course solely within the purview of the Executive branch, and it would be inappropriate for this Court to urge any action, one way or the other on it, except to say, that except for the recommendations set aside by the Court, the report remains valid."*[91]

[87] - To the extent that there are parts of the COI Report which have nothing to do with how the COI deals with the Claimant, and those matters of which he was not given full notice, and/or denied constitutional rights, the COI Report - as amended by consent in my decision in ***Patt v. Marshalleck et al***[92] *- in and of itself is not rendered nugatory, nor any its recommendations which do not have anything to do with matters of which the Claimant was denied his rights to natural justice and/or his constitutional right to protection of the law.*

[88] - The written submissions for the 1st – 3rd Defendants helpfully sets out what may be severed and quashed and what may survive on its own.

[89] - The 1st - 3rd Defendants say that "Of the 15 paragraph titles that comprise the Report, the following titles do not in any way implicate, affect or prejudice the Claimant and are divisible from those that may tend to prejudice him:

A. The Commission
B. The Terms of Reference
C. The Inquiry
E. Detailed Findings
(i) The Finance and Audit Reform Act
(ii) The Open, Selective and Limited Tendering Procedures
(iii) The Financial Orders
(iv) The Stores Orders
*(v) The Public Procurement Procedures Handbook (**except perhaps for paras 66, 69, 70 & 71**)*
(vi) The IMF Draft Financial Regulations
(viii) Livestock
*F. Conclusion (**except for para 106**)*
G. Recommendations of Commissioner Martinez
First Schedule"[94] (Emphasis added)

> [*90] - I agree. In all the circumstances of this case, this Court agrees that any and all portions of the COI Report which refer to the Claimant in any way whether directly, or by inference, must be excised from the Report, and in particular, the findings contained in the COI Report at paragraphs 12, 13, 14, 15, 16, 22, 23, 24, 26, 32, 40, 42, 66, 67, 68, 69, 70, 71, 72, 83, and paragraph 106 .[95]"*

[71] The Trial Judge also noted that the Claimant also claims:

> *"An order or prohibition restraining the Government of Belize from effecting or enforcing the Findings and Report of the Commission; and a permanent Injunction restraining the Government of Belize, its servants, agents, departments, authorities and officials, from implementing or acting upon the Findings and Report of the Commission*."*- I will not grant this order. As partially quashed, what action, is now taken with respect to the COI Report, is within the purview of the Executive branch and it would be inappropriate for this Court to prevent any action on it."*

[72] I have carefully reviewed the Report in depth and agree (as the trial judge notes) that all portions referring to the Respondent in any way whether directly or by inference must be excised from the Report, *"those paragraphs and sections of the COI Report and the findings therein which are affected by the serial denials of the rights of (the Respondent) should be quashed'.* I agree too*, "to the extent that there*

are parts of the COI Report which have nothing to do with how the COI deals with the Claimant ... its recommendations which do not have anything to do with matters of which the (Respondent) was denied his rights ..." could remain. The Defendants had submitted the distinction between those 'that do not in any way implicate, affect or prejudice the Claimant and are divisible from those that may tend to prejudice him:'

[73] However, I cannot agree that the paragraphs of the Report highlighted and removed in ***Patt*** and in this case by the Trial Judge achieve this. The Respondent was the head of the previous administration, not only paragraphs that are considered to directly reference him, affect him when, as Prime Minister and Minister of Finance, he is ultimately responsible. Examples are numerous, to reference only one, paragraph 103, *"in conclusion, the Commission reports that all sales of government vehicles during the period under review, albeit done in accordance with an established informal procedure adopted by the Ministry of Finance, were executed unlawfully in breach of well-known public procurement policies."*

[74] The Report does, in some areas, generally address issues and make recommendations which would be of interest and benefit. Recommendations on processes and amendments are what can be considered free-standing, and those can remain. Those are limited to some comments and recommendations on the Finance and Audit Reform Act, Open, Selective and Limited Tendering Procedures, the Financial Orders, the Stores Orders, the Public Procurement Procedures Handbook, the IMF Draft Financial Regulations, Livestock, Recommendations, Commissioner Martinez' Recommendations and the First Schedule with recommended amendments to the Finance and Audit Reform Act.

Costs

[75] The Respondent has essentially been successful and should be entitled to his costs.

Disposition

[76] Under ***section 205*** of the ***Senior Court Act*** we have the power to confirm vary amend or set aside any such order as the High Court or judge thereof from whose order the Appeal is brought might have made or to make any order which ought to have been made and make such further or other order as the case may require. In the circumstances:

1. The Appeal against the award of the sum of $125,000.00 as redress for compensatory damages and $60,000.00 in vindicatory damages, which shall be paid by the 4th Defendant, is dismissed and the Trial Judge's assessment affirmed.

2. The declaration that the Findings and Report were made in consequence of a Commission of Inquiry process that was violative of the Claimant's/Respondent's natural justice rights and violative of the Claimant's constitutional right to protection under law is affirmed.

3. The quashing order is varied to provide an order of certiorari quashing the Findings and Report of the Commission contained in the COI Report, except paragraphs 1, 2, 3, 4, 5, 7, 25, 27, 28, 29, 30 to Act in third to last line,) 31, 33, 34, 35, 36, 37, 38, 39, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 73, 74, 76, 77, 78, 80, 98, 100, 101, 102, 108, 109, 110, 111, 112-124, the First Schedule , Annex 1.

4. The Appellant pay the costs of the Respondent in this Appeal and the Respondent's Notice and costs in the Court below.

Marguerite Woodstock Riley KC
Justice of Appeal

[77] **MINOTT-PHILLIPS KC, J.A.**: I agree, for the most part, with the reasons expressed by my sister, Woodstock Riley, JA. My small departure is in relation to what is set out in paragraph [62] above. I interpret differently from my sisters the following words of Shoman, J, in numbered paragraph 81 of her judgment, *viz*:

> *"The First Defendant Commissioner is a senior attorney-at-law, not a judge, but one whose independence and integrity is ascribed to him as credit, and whose unmooring from that code of conduct must be proven by the Claimant who alleges bias."*

I understand Shoman, J, to be making a general statement that he who alleges must prove. Each of the Commissioners is assumed to be clothed with independence and integrity unless proved not to be. To me, nothing turns on the fact that the First Defendant Commissioner is a senior attorney-at-law. I do not interpret that statement by Shoman, J as saying otherwise. The Commission's submissions responding to the allegations of bias (and set out in paragraphs [52] - [59] above) find favour with me. The complaint was not restricted to apparent bias but was a complaint of both actual and apparent bias. The words of Shoman, J, quoted above were, I think, intended to be a general overarching statement that did not drill down to the different evidential requirements for establishing actual and apparent bias. In the case of actual bias, the animus must be proved. In the case of apparent bias, the animus need not be proved if the facts that are proved give rise to a presumption of apparent bias, and that presumption is not rebutted. Applied to apparent bias, I take the judge below to be saying nothing more than that the facts giving rise to apparent bias (as opposed to animus against the Respondent) must be proved and, in her view, those facts were not proved.

[78] The Court below was of the view that bias against the Respondent was not established. This Court accepts the Trial Judge's decision that all portions of the Report referring to the Respondent in any way, whether directly or by inference, must be excised from the Report and has added to the excisions of the Court below. What remains of the Report following our order varying and increasing the scope of the excisions are recommendations on processes and freestanding amendments,

etc. (specified with greater particularity in paragraph [74] of this judgment), which have the practical effect of addressing the Respondent's complaint completely. I agree with the order made by this Court.

Sandra Minott-Phillips KC
Justice of Appeal

[78] **ARANA, J.A.**: I have read the decision and reasons of my sister Woodstock Riley JA herein, and I concur.

Michelle Arana
Justice of Appeal