

IN THE SUPREME COURT OF BELIZE, A.D. 2008

Claim No. 252 of 2008

BETWEEN:

JUANITA LUCAS

Claimant

And

**CHIEF EDUCATION OFFICER
THE MINISTER OF EDUCATION
YOLANDA GONGORA,
JAHMOR LOPEZ,
PEDRO KUKUL,
ENDEVORA JORGENSEN,
Members of Investigation Team
Investigating the Claimant
ATTORNEY-GENERAL**

Defendants

Claim No. 253 of 2008

BETWEEN:

CELIA CARILLO

Claimant

And

**CHIEF EDUCATION OFFICER
THE MINISTER OF EDUCATION
YOLANDA GONGORA,
JAHMOR LOPEZ,
PEDRO KUKUL,
ENDEVORA JORGENSEN,
Members of Investigation Team
Investigating the Claimant
ATTORNEY-GENERAL**

Defendants

BEFORE: The Honourable Minnet Hafiz-Bertram

Mrs. Magali Marin-Young for the Claimants

Mr. Samuel Shepherd for the Defendants

J U D G M E N T

The Claimants and the Nature of their case

1. This judgment relates to consolidated claims which raise the same issues. Both Claimants are Teachers by profession and are seeking judicial review and constitutional redress. The Claimant in Claim No. 252 of 2008 is the Principal of Escuela Secundaria Tecnica Mexico (ESTM), a school that receives public funds and is managed by the Board of Directors of ESTM. The Claimant in Claim No. 253 of 2008 is the Vice Principal of ESTM.

2. The Defendants are Hon. Patrick Faber, the Minister of Education., Maud Hyde, the Chief Education Officer, Yolanda Gongora, the Director of General School Services, of Ministry of Education, Jahmor Lopez, the Belize District Education Council Manager, Pedro Kukul, the Corozal District Education Council Manager, Endeavora Jorgensen the representative of the Corozal Regional Education Council and the Attorney General.

Brief Factual Background

3. On the 1st day of June, 2004, Juanita Lucas, was appointed by the ESTM Board of Directors, as Principal of ESTM. Celia Carillo was appointed on 1st August, 2004 as Vice Principal of ESTM.

4. In December of 2005, the Chief Executive Officer of the Ministry of Education directed that an investigation be carried out at ESTM as a

result of complaints received about the Principal and Vice Principal. The Investigation team met with various teachers of whom twenty nine voiced concerns about the administration of the school.

5. On the 8th January, 2008, five Heads of Departments at ESTM wrote a letter complaining about “administration” to the ESTM Board of Directors. Then on January 23rd, 2008, a letter was sent by twenty one teachers of the ESTM staff to the ESTM Board of Directors complaining about administration.
6. On February 28th, 2008, the Principal was invited to meet with the Minister of Education, Hon. Patrick Faber, which meeting she attended, to discuss the problems at ESTM. She was informed by the Minister that he was sending an investigation team to the school the following week. On the same day there was a mass “sick-out” by over twenty teachers at the school who failed to turn up to work.
7. Between March 3rd - 11th, 2008, an Investigation Team put together by the Minister, conducted an investigation. The Investigation Team comprised Director of General School Services, Yolanda Gongora, Belize District Education Council Manager, Jahmor Lopez, Corozal District Education Council Manager, Pedro Kukul, and the representative of the Corozal Regional Education Council, Endeavora Jorgensen.
8. On 25th March, 2008 the Investigation team sent a Report to the Board of Management of ESTM recommending that the Board takes necessary action to resolve the matter
9. On March 27th, 2008, the ESTM Board of Directors was given a directive by the Chief Education Officer, Maud Hyde, to discuss the

finding of the Investigative Report and to take a decision as regards the Principal and Vice Principal, based on the Report by the Investigation Team. The ESTM Board of Directors did not find consensus and the Minister of Education then referred the matter of the Report by the Investigation Team to the Corozal Regional Education Council (CREC).

10. On March 28th and 29th, 2008, there was a mass sick-out by teachers at ESTM. On March 29th, 2008, the Minister met with the teachers.
11. On April 1st, 2008, the CREC reviewed the report and referred the matter to the Ministry of Education, with certain recommendations based on the report, including that the Claimants be placed on paid leave pending further investigation.
12. On 7th April, 2008, Juanita Lucas and Celia Carillo received letters from Maud Hyde informing them that they are to be placed on leave with pay until the situation is resolved.
13. On April 22nd, 2008 the Principal and Vice Principal received a second letter from the Chief Education Officer, Maud Hyde inviting them to a meeting to answer to certain allegations enclosed and for the first time see the transcript of the interview with teachers and is made aware of the allegations made by the teachers. They did not attend on advice given by the attorney.
14. On May 7th, 2008, the Chief Education Officer, Ms. Maude Hyde wrote to the Principal and Vice Principal extending the leave with pay and announced that the Board of ESTM will now be conducting an investigation.

15. Since they were sent home on leave, the Principal and Vice Principal have been in receipt of their salary.

16. The Applicants therefore now seek the following relief by their applications:

(a) *An order of certiorari quashing the decision taken the 7th day of April, 2008 by Maud Hyde, Chief Education Officer, unlawfully suspending the Claimant, Juanita Lucas, as Principal of Escuela Secundaria Tecnica de Mexico (ESTM), based on recommendations from the Corozal Education Regional Council;*

(b) *An order of certiorari quashing the decision taken the 7th day of May, 2008 by Maud Hyde, Chief Education Officer, unlawfully extending the suspension of the Claimant, Juanita Lucas, as Principal of Escuela Secundaria Tecnica de Mexico (ESTM);*

(c) *An order reinstating the said Claimants to their post as Principal and Vice-Principal of ESTM.*

(d) *A Declaration that the appointment by the Ministry of Education and the Minister of Education, Hon. Patrick Faber, on the 28th February, 2008 of the "Investigation Team" comprised of Director of General School Services Yolanda Gongora, Belize District Education Council Manager Jahmor Lopez, Corozal District Education Council Manager Pedro Kukul, and the representative of the Corozal Regional Education Council Endeavora Jorgensen, concerning complaints against the Claimant by ESTM teachers, and the*

investigation by the said Investigation Team, and their subsequent report, are illegal, unlawful, arbitrary, and irrational.

- (e) A Declaration that the referral by the Ministry of Education and the Minister of Education, the Hon. Patrick Faber, on April 2nd, 2008, of the Investigation Team's Report and any decision-making as regards the findings of the said Report, to the Corozal Regional Education Council for a decision and recommendation, after the ESTM Board of Directors failed to make recommendations or to take a decision based on the said Report, is unlawful and ultra vires the Education Rules.*
- (f) A Declaration that the decision of the Chief Education Officer, Maud Hyde, suspending the Claimant from her job as Principal at ESTM, infringes the Claimant's right to a fair trial in violation of sections 6(1) and 6(7) of the Belize Constitution.*
- (g) A Declaration that the decision of the Chief Education Officer, Maud Hyde, suspending the Claimant from her job as Principal at ESTM, infringes the Claimant's right to work in violation of section 15(1) of the Belize Constitution.*
- (h) A Declaration that the investigation and the Report of the Investigation Team, appointed by the Minister of Education, entitled "Report of the Investigation at Escuela Secundaria Tecnica Mexico March 11th - 13th, 2008" is illegal and unlawful because the proceedings of the said Investigation Team breached the Claimant's right to be heard (audi alteram partem) and the Claimant's right to be heard by an unbiased managing authority.*

- (i) *A Declaration that the Report of the Investigation Team, appointed by the Minister of Education, is illegal and unlawful because the said Committee breached the Claimant's procedural and substantive legitimate expectation that an investigative committee duly appointed by the Managing Authority, would have been unbiased and would have acted fairly during the conduct of the investigation.*

- (j) *An Order for damages for the Defendants' violation of the Claimant's constitutional and other rights and for the Defendants' breach of their statutory obligations to the Claimant.*

- (k) *Such other orders and relief as the court may think just to the peculiar circumstances of this case, including an order for the Defendants to pay all the costs of the Claimants in this application.*

Evidence

17. The Claimants in both actions filed witness statements and affidavits with forty one exhibits. The affidavits were filed for the application for Judicial Review and also for an injunction. Jaunita Lucas in Claim No. 252/2008 filed four affidavits and a witness statement on behalf of herself. The affidavits are from Narda Garcia, Adrian Cowo, Almadeli Castaneda and Vilma Garcia. For Celia Carillo she filed a witness statement in support of her claim and also four affidavits from Nardia Garcia, Adrian Cow, Almadeli Castaneda and one by Ms. Vilma Garcia. The Claimants were cross-examined and the witnesses in addition to their affidavits gave viva voce testimony.

18. As for the Defendants, they filed three affidavits from David Leacock and an affidavit from Elbert Lopez. There is also one witness statement from Mr. Oscar Santana. These witnesses were all cross-examined.

Submissions by Mrs. Young for the Claimants

19. Mrs. Young submitted that in respect to Judicial Review a Court may intervene although a decision is interim or preliminary. The Court may quash a decision though it be preliminary where the consequences of the preliminary decision would cause real injustice. Learned Counsel further submitted that Judicial review may therefore be granted of consultation that is unreasonable or unfair and although the decision is interim if it would influence future conduct, especially if the challenge is one as to jurisdiction. Learned Counsel relied on **Michael Fordham *Judicial Review Handbook* 5th Ed. Para. 4.7.1-4.7.5 and paragraph 4.7.5**
20. Learned Counsel, Mrs. Young further submitted that the Minister of Education nor Ministry of Education had any legal authority to appoint an Investigation Team on January 28th, 2008 to conduct an investigation into the complaints made by teachers or student of ESTM, and therefore acted *ultra vires* the *Education Act* and the *Education Rules* in the appointment of an Investigation Team. That at no time did the managing authority, being the ESTM Board, request the assistance of the Minister nor the Ministry of Education to assist in any investigations as regards the Principal and Vice Principal of ESTM. That it is **section 94** of the ***Education Rules*** which empowers the Managing Authority, in ESTM's case, the ESTM Board of Directors, to conduct an investigation. The Investigation Team therefore had no legal authority to investigate and to make a report. Learned Counsel in support of her argument relied on the ***Education Act, Cap 36, section 3*** which sets out the functions of the Ministry of Education, **section 4** which sets out the functions of the Chief Education Officer and **section 16** which empowers the managing authority

with the powers to hire, transfer and suspend members of staff of schools. Mrs. Young submitted that under **section 16** it is implicit that the managing authority has the power to investigate any matter that would require disciplinary action or lead up to disciplinary action.

21. Learned Counsel further submitted that neither the Ministry of Education nor the Minister of Education nor the Chief Education Officer had the requisite power to appoint an investigative team in regards to any complaints by any teacher, as the functions to hire, transfer and discipline any member of staff of any school are expressly given under the **Education Act** to the managing authority, which would be the ESTM Board. Further, **Rule 94** of the **Education Rules** expressly empowers the managing authority to conduct an investigation in regards to any complaints. That when reviewing this provision in conjunction with the **Education Act** the power to investigate and take disciplinary action as regards to members of staff is vested with the managing authority of a school only, and not the Minister nor the Chief Education Officer.

22. In support of her argument, Learned Counsel referred to the case of **Barnwell v Attorney General (1993) 49 WIR 88** where the Chancellor of the Judicial Services Commission (JSC) met with the judge accused of wrongdoing and read a letter of complaint from a magistrate against the said judge, and then the Chancellor reported his discussion with the judge to the JSC, and the JSC after hearing what the Chancellor reported, without affording the judge an opportunity to be heard, suspended him from his duties, pending an investigation by them. It was held that since the Chancellor had no lawful authority to meet with the judge or to act on behalf of the JSC and interview the judge, and that since the Chairman did not have the lawful authority to hold such a meeting and the JSC could not adopt the Chairman's meeting as a hearing by them, the action by the

Chancellor was declared to be null and void. The decision to suspend the judge was also declared to be null and void, having been infected with the illegality of the Chancellor's illegal act.

23. Mrs. Young submitted that in this case the appointment of the investigative team was illegal and *ultra vires* the **Education Act** and the **Education Rules** and that the subsequent suspension of the Principal and the Vice Principal was also null and void. That the CREC manager, Francisco Magana, had written to the Chief Education Officer and recommended that the principal and Vice Principal be placed on leave based on the situation at ESTM and the findings in the report that the Investigative team had prepared. Based on the recommendation from the CREC, the Chief Education officer suspended the Principal and Vice Principal.
24. Learned Counsel further submitted that there was procedural unfairness by the Investigative Team that in putting together their report, they did not proffer any accusations made by students or teachers when they interviewed the Principal and the Vice-Principal on the 11th day of March, 2008. The questions put to them were general questions as to management policies: How do you handle lesson planning? Do you have an active PTA? Do you have a student council? How is your agriculture program? How do you provide assistance to new teachers? No specific accusations or evidence were proffered to the Principal and the Vice Principal, for their response.
25. Learned Counsel submitted that the Principal and the Vice Principal are entitled to a fair hearing and as such they have a right to be given sufficient information to be able to make proper representations in regards to any accusations made against them. This allows representations to be properly informed and directed, and avoids unfair secrecy or the relevant

person later being unfairly taken by surprise. Mrs. Young relying on the case of ***Kanda v Government of Malaya [1962] AC 322*** quoted what Lord Denning said:

[They] must know what evidence has been given and what statements have been made affecting [them] and [they] must be given a fair opportunity to correct or contradict them.

Mrs. Young further relied on ***Re Pergamon Press Ltd. [1970] 3 All ER 534*** which represents the *locus classicus* of the principle being advanced by the Claimants.

26. Learned Counsel contended that the Investigative Team did not proffer any specific charge against the Principal and Vice-Principal to have them answer to the accusations. From the report, the teachers that were interviewed gave very specific complaints and those complaints and accusations were not put to the Principal and Vice Principal until after the report was prepared and the Investigative Team made recommendations that were adverse to the Principal and Vice Principal. As such, the Investigative Team's procedure and report are *ultra vires* the principles of natural justice and the right to a fair hearing.
27. Learned Counsel further submitted that it was not until April 22nd, 2008, that the Chief Education Officer submitted the interview with teachers by the Investigative Team which the Principal and the Vice Principal saw for the first time and it had specific complaints that the teachers had made to the Investigative Team, but this was after the Chief Education Officer had suspended them and the Minister of Education had announced on public television that based on the Investigative Team's report, there was enough material for the ESTM Board to act.
28. Further, Learned Counsel submitted that given the position of authority that the post of Principal and Vice Principal of a school commands and

demands, the Investigative Team did not afford the Principal and the vice Principal a fair hearing to avoid the consequential scandal and stigma.

29. On the Suspension of the Applicants, Learned Counsel submitted that the Chief Education Officer on the 7th day of April, 2008, suspended the Principal and Vice Principal, with pay and on May 7th, 2008, extended that suspension to June 27th, 2008 and even though no further extensions have been issued the Principal and vice Principal remain suspended to date. That under **section 16** of the **Education Act** the Claimants may appeal such order to the Chief Education Officer who acts as an appellate body in terms of hearing an aggrieved teacher. Learned Counsel further relied on **Rule 94** of the **Education Rules** and submitted that the managing authority alone can suspend a member of staff and conduct investigations, and its functions are therefore that of a disciplinary body and are judicial. Those functions cannot be usurped without express lawful authority.

30. Further, Mrs. Young submitted that Rules **97, 98, and 99** of **Education Rules** deal with suspension without pay which are distinguishable from suspension with pay pending an investigation under Rule 94. Rule 94 is applicable when the managing authority receives a complaint and needs to suspend a teacher or member of staff with pay pending an investigation by them, before disciplinary actions are instituted as regards that teacher or Principal. Rules 97, 98, and 99 deal with situation when disciplinary actions are to be taken against a teacher for cause that has been established during the investigation by the managing authority, for example suspension without pay or on half pay. In the case at hand, the Principal and Vice Principal were suspended by the Chief Education Officer with pay, pending an investigation, and not by the managing authority.

31. Mrs. Young submitted that neither the Minister of Education nor the Ministry of Education nor the Chief Education Officer had legal authority on the 2nd day of April, 2008, to appoint an investigative team under the **Education Act** nor under the **Education Rules** or to suspend a member of staff, and they did not have the legal authority to refer the Investigation Team's report firstly to the Board to have the Board discuss it and take a decision based on the report, and upon the Board's failure to act on their directive, to refer the recommendations to the CREC. That it was a matter for the managing authority, if "*it has substantial grounds to believe that it is in the best interest of the students and the school, a teacher or other member of staff may be suspended while the Managing Authority investigates an accusation of misconduct against him.*" [Rule 94] **Education Rules**.
32. Learned Counsel further submitted that the Principal and Vice Principal were at all times entitled to know what accusations/complaints were being investigated by any Investigation Team or sub-committee appointed by the managing authority or the specifics of any complaints made against them. Further, to rebut, deny, or answer them and to cross-examine their accusers and be given a reasonable opportunity to put forward facts and arguments in their defence. Counsel relied on **Barnwell v Attorney General (1993) 49 WIR 88** and **Birss v Secretary for Justice [1984] 1 NZLR 513**.
33. Learned Counsel, Mrs. Young on the ground of legitimate expectation submitted that the Principal and Vice Principal had a legitimate expectation that they would have been heard in camera by the managing authority or persons appointed by them during any investigations and questioned about the allegations/complaints made or referred to the Managing Authority, and be given an opportunity to respond and put

forward facts and arguments in their defence. That this legitimate expectation derives from the previous conduct of the ESTM Board and the Ministry of Education when there was attempt by the Ministry of Education to conduct an investigation in 2005 as regards to complaints against the Principal by four (4) teachers. The ESTM Board's Chairperson had written to the Ministry of Education complaining about the Ministry's usurpation of the authority of the Board of ESTM in dealing with disciplinary issues with members of staff. See JL 25 to JL 34 exhibited in Juanita Lucas' affidavit of the 22nd May, 2008. Learned Counsel in support of her argument relied on ***Barnwell v Attorney General (1993) 49 WIR 88*** on the judgment of Bishop CJ at page 116.

34. Learned Counsel further submitted that the Applicants had a right to pre-decision reasons for their suspension and a right that any report will accurately and objectively present the facts. Further, they had a legitimate expectation that any investigation conducted would be by the Managing Authority and that it would have been impartial and not biased and that the persons so investigating would be unbiased. That, Endevora Jorgensen, a member of the Investigation Team, was a principal of a competing secondary school, who had in the recent past publicly made derogatory remarks about ESTM and the Applicant. The other members of the Investigation Team were all public officers working in the Ministry of Education, and acting on the direction of the Minister of Education. Further, all previous investigations by the managing authority as regards to any member of staff were held *in camera* and not in an open auditorium and not publicized in the media.

35. On the ground of irrationality, Learned Counsel submitted that the Minister of Education, in appointing the Investigation Team was influenced by the demands of parents and students who wanted ESTM to be purged of PUPs.

Constitutionality of the Suspension

36. Learned Counsel, Mrs. Young submitted that **Section 20** of the **Belize Constitution** states that where any persons alleges that **section 3 to 19 inclusive of the Constitution** “has been, is being or is likely to be contravened in relation to him,” the person may apply to the Supreme Court for Constitutional Redress.
37. That in this case the Minister of Education empanelled an investigation team comprised of officers of the Ministry of Education to conduct an investigation in regards to the Claimants as a result of complaints made by teachers. The Investigation Team in conducting its investigation and preparing its report was performing a public function, and the Chief Education Officer, in suspending the Applicant was executing a public function and consequently the Minister of Education and the Chief Education Officer can therefore be classified as public authorities for purposes of constitutional redress and judicial review.
38. Learned Counsel contended that the Claimants have a constitutional right to a fair trial as provided for under **section 6(7)** of the **Belize Constitution**. That the Investigation Team appointed by the Minister of Education failed to inform the Claimants what complaints were being made against them and failed to give them an opportunity to rebut any accusations made. Their findings which were captioned in their report were adverse to the Claimants and were publicized to the media and the Minister of Education, as representations of facts. Their findings ultimately led to the suspension of the Principal and the Vice Principal, which had grave consequences, professionally, emotionally and socially.

39. Further, the suspension by the Chief Education officer was done upon the recommendation of the CREC, which had relied on the finding in the Investigative Team's report. Mrs. Young submitted that since the Investigative Team did not proffer the charges to the Principal and the Vice Principal with sufficient clarity to enable them to rebut or to answer the charges or to see the complaints, this contravened their constitutional right to a fair hearing under **section 6 (7)** of the ***Belize Constitution***. See also ***Barnwell v Attorney General (1993) 49 WIR 88***.
40. Additionally, Learned Counsel submitted the Chief Education Officer, in suspending the Principal and the Vice Principal from their respective duties did not ask them to respond to the findings in the report by the Investigative Team and this too breached their constitutional right to a fair hearing. The Minister of Education acted on complaints made by students and teachers, and all indications were that those complaining teachers and students expected that the Principal and Vice Principal would be removed from their posts, to make way for a Principal and Vice Principal of the same political persuasion of the Minister of Education and the executive arm of the Belize government, in contravention of **Section 16 (2)** of the ***Belize Constitution*** and the Applicant's rights not to be discriminated against.
41. Further, Learned Counsel submitted that **section 16** of the ***Education Act*** empowers the managing authority to suspend a teacher or staff member, and empowers the Chief Education Officer to hear any appeal by any aggrieved teacher or staff member. That, the Chief Education Officer has already suspended the Principal and Vice Principal, and thus the Principal and Vice Principal have no other body to appeal. If after appealing to the Chief Education Officer, the Principal and Vice Principal were still not satisfied, the Principal and

Vice Principal may thereafter appeal to an Arbitration Panel appointed by the Minister. Learned Counsel relied on ***Maria Roches v Attorney General*** (unreported) ***Supreme Court Action No. 132 of 2004***; ***Clement Wade et al v Maria Roches*** (unreported) ***Civil Appeal No. 5 of 2004***.

42. Learned Counsel contended that the Minister has already opined that his Investigation Team's report had enough material to have made the managing authority act against the Principal and Vice Principal. Further, the Chief Education Officer has already taken a decision against the Principal and Vice Principal in regards to the purported complaints against the Principal and Vice Principal and there is very unlikely to be any unbiased person to hear the Principal and Vice Principal and allow them a fair hearing.
43. Mrs. Young further submitted that **section 15** of the ***Belize Constitution***, Chapter 4 protects a person's right to work. That this right to work has long been recognized by the English common law also. The common law right to work was recognized by Morris J.A. (Ag) in ***Civil Appeal No. 10 of 1997 (Antigua and Barbuda) Attorney General v E. Ann Henry Goodwin et al*** (unreported) where it is stated that the Constitution of Antigua and Barbuda does not have any express provision protecting the right to work, but the right nevertheless recognized to exist at common law.
44. Further, Learned Counsel submits the right to work means the right to practice one profession without being unjustly excluded from it and shut out at the whims of those having control of it. In the case at bar, Mrs. Young submitted that the Principal and Vice Principal had a right to work and not to be unjustly and unlawfully excluded by the Chief Education Officer. See ***Maria Roches v Attorney General*** (unreported) ***Supreme Court Action No. 132 of 2004***; ***Clement***

Wade et al v Maria Roches (unreported) Civil Appeal No. 5 of 2004.

Submissions by Mr. Shepherd for Respondents

45. The Respondents submitted that the **Education Act** and the **Education Rules 2000** give the Chief Education Officer the powers to suspend. In particular, **section 16** confers authority on the Managing Authority to suspend teachers. Further, that the Chief Education Officer is conferred with statutory power to decide whether to suspend the teacher on appeal from the Managing Authority from the school or institution. However, Counsel acknowledges that section 16 does not provide for a remedy in the event that the Managing Authority fails to make any decision. But, that **section 16** is further supplemented by the provisions of the **Education Rules**. Learned Counsel referred to **Sections 98 and 99** of the Rules.

46. Learned Counsel further submitted that **section 99 (1)** of the **Education Rules** gives power to the Chief Education Officer to refer an appeal of a suspension to the Regional Education Council who will subsequently provide recommendations. That **Section 99(3)** confers power to the District Council to make recommendations on its own accord if it feels the Managing Authority of the school failed to take disciplinary action. Such recommendations should be made to the Chief Education Officer who then has power to review the case and determine what actions should be taken. Further, Mr. Shepherd submits that **section 99(3)** expresses the overarching power the Chief Education Officer has over the Managing Authority and specifically confers power when the District Council is dissatisfied at the Managing Authorities ability to institute disciplinary proceedings.

47. Mr. Shepherd submitted that the Board of Directors of ESTM failed to reach any decision when considering how to act in response to the findings of the Investigation Team (see the minutes of the Board meeting on 27th March 2008 at “**JL 10**”). The Deputy Chairman resigned at the Board meeting itself and the Board failed to reach a consensus and recommended that the Ministry resolves the situation. In so doing, Counsel submitted, the Board waived its decision making powers under **section 16**. That in light of this abdication of decision-making responsibility the Ministry was fully entitled to seek the recommendations of the Corozal Regional Education Council under the provisions of the Education Rules.
48. Learned Counsel submitted that **section 16 (b), (c) and (d)** clearly provide that the Chief Education Officer be part of the disciplinary process. At **section 16 (d)** there is a clear provision outlining that the Chief Education Officer be the first route of appeal following the Managing Authority’s decision. That this conveys a statutory judicial function to the Chief Education Officer who Learned Counsel submitted should decide the matter should the Managing Authority waive their own responsibility to decide the case.
49. Further, Mr. Shepherd submitted that **section 99** of the **Education Rules** does not seek to confer judicial functions on the District Council as it is a body whose task is to make recommendations and to advise the Chief Education Officer who then, separately, is to review the case and make the decision. Further, that **section 99(3)** develops the provisions of **section 16** in providing for the situation where the Managing Authority has failed to institute disciplinary procedures. The District Council can at this point make recommendations to the Chief Education Officer that it deems that disciplinary proceedings were in fact warranted. This effectively is the same power of appeal that

section 16 (d) confers on the Chief Education Officer when a teacher is aggrieved at a decision made by the Managing Authority. That the Rules simply allow it to be pursued where the Managing Authority fails to act as well as when it does.

50. Learned Counsel submitted that in the instant case not only did the Board of Directors of ESTM fail to act themselves, moreover they actively delegated the decision to the Ministry of Education to decide upon. See the minutes of the Board meeting carried out on 27th March 2008 read at their penultimate two paragraphs: (exhibited at “**JL-10**”)

51. Mr. Shepherd submitted that at the commencement of the Investigation, the Management Authority who has power to investigate complaints under **Section 94** of the Education Rules failed to properly investigate the matter. The Board had been aware of the tensions that existed at the school for some years as they were in possession of the 2005 Investigation Team Report. The Board had also failed to respond to two letters of complaint about the Principal and Deputy Principal on the 8th and 23rd January 2008. Furthermore the Board had failed to respond in any way to the mass sick-out of teachers which occurred on 28th February 2008. The Board simply had not taken any significant action to investigate the escalating tension between the Principal and Vice Principal and the rest of the school staff.

52. Further, Mr. Shepherd contended that the Ministry of Education at **Section 3(2) (c)** has a broad mandate to monitor the quality and effectiveness of education at the secondary and post secondary system of which ESTM formed a part and under the general direction of the Minister, is mandated to work for the sufficient and efficient

provision of education in Belize. Also, **section 94** of the Education Rules does not limit the power to instigate investigations to the Board of Management rather it just provides an individual example of where the Board can suspend a teacher whilst an investigation is conducted.

53. Learned Counsel submitted that the Investigation Team in its 2008 Report acknowledged that they did not attempt or sought to usurp the functions of the Board but merely to provide the Board with an overview of the situation and with information that the Board could use to supplement its decision on, if and how to act. Therefore, the Ministry's decision to instigate an Investigation into the tensions at ESTM was not *ultra vires* the Education Act rather it was in the spirit of its provisions, particularly when the Board was failing to investigate the matter itself.

54. In response to the Claimants claim that the Minister or Ministry had no power to refer the Investigation Teams Report to the CREC on 2nd April 2008 under **section 99(3)** of the **Education Rules**, Learned Counsel Mr. Shepherd submitted that the decision to refer the Investigation Team's Report to the CREC has its viability in that the CREC in declaring its' dissatisfaction with the Board of Managements failure to come to a decision had to have access to the documentation that the Board had in order to make recommendations to the Chief Education Officer. Following the Boards' referral of decision making responsibility to the Ministry, the Chief Education Officer was forced to recourse to the CREC under **section 99(3)** of the Rules.

55. On the issue of the Applicants right to know what complaints were being investigated by the investigation team, Learned Counsel submitted that it is clear from the affidavits of the Applicants that both

Applicants were aware of the letters of complaint sent to them first by the Heads of Department and secondly by a larger group of teachers. They were therefore aware of the thrust of the complaint against them. Furthermore, the purpose of the investigation was not to make allegations but to explore the various happenings and to collect information. The investigating team in personally interviewing the Claimants made them aware of the complaints made against them and asked for an explanation. Furthermore, it could have easily been prejudicial to the parents, students and teachers present had the Claimants been present when they were voicing their complaints. That the Investigation Team also met with both Juanita Lucas and Celia Carillo themselves as part of their compilation of facts.

56. As for the claim that the Applicants had a right to be heard in regard to the accusations, Learned Counsel submitted that the purpose of the investigation was not to conduct a trial but to ascertain the causes of the tension between the staff and the administration of ESTM. It would have been prejudicial to the running of the school had the Principal and Deputy Principal given opportunity to rebut or cross examine teachers and would have gone against the spirit of the fact finding mission that the investigation team was involved in doing. It further would have hampered the purposes of the investigation, thwarting the ability of teachers to speak freely in front of their immediate superiors. However, they were given the chance to make representations to the investigating team as they were both interviewed individually and allowed to explain their side of the dispute. Counsel relied on the Privy Council case of ***Furnell v Whangarei High Schools Board (1973) AC 660*** where it was held that there was no breach of natural justice when a teacher was suspended by the board without giving him an opportunity to deal with the charges made against him.

57. Learned Counsel in response to the claim that the Claimants legitimate expectation were breached because they were not heard in camera submitted that the Managing authority in the present case was informed by the Investigating Team's Report. The Investigating Team gave both Applicants the chance to fully explain their position and to defend themselves against any allegations. This Report was passed to the CREC and the Chief Education Officer so the Claimants' answers and submissions were visible to all the relevant advisers and decision makers.
58. Learned Counsel submitted that nonetheless any legitimate expectation that the Applicants had that they would be heard in camera by the managing authority was abdicated by the Board when they failed to take action to resolve the issue.
59. As for the right to pre-decision reasons for their suspension, Mr. Shepherd submitted that under Section 94(1) of the Education Rules it is made clear that persons suspended should be informed in writing of the nature of the accusation that is made against them. That in writing to the Applicants (**See exhibited at JL 17**) Mrs Maud Hyde the Chief Education Officer outlined the reasons for the suspension and stated the **Education Rules** under which it was being enforced.
60. Further, Mr. Shepherd submitted that neither the Education Act nor the Education Rules provide for pre-decision reasons for disciplinary action. Furthermore there is assorted case law that dictates that when officers are suspended the rules of natural justice do not always apply at every instance. Learned Counsel relied on the Privy Council case of **Rees and Others v Cane (1994) 43 WIR 444** where Lord Slynn of Hadley after a summary of the relevant case law commented:

It is clear from the English and Commonwealth decisions which have been cited that there are many situations in which natural justice does not require that a person must be told of the complaints made against him and given the chance to answer them at the particular stage in question. Essential features leading the court to this conclusion have included the fact that the making of investigation is purely preliminary, that there will be a full chance adequately to deal with the complaints later, that the making of the inquiry without observing the audi alteram partem maxim is justified by urgency or administrative necessity, that no penalty or serious damage to reputation is inflicted by proceeding to the next stage without such preliminary notice, and that the statutory scheme properly construed excludes such a right to know and reply at the earlier stage.

61. As for the Claimants' legitimate expectation that any investigation conducted by a public authority would be impartial and not biased, Counsel submitted that there is no evidence of any bias on the Investigation Team and the allegations made by the Applicants are pure speculation. That the Applicants allege bias on the grounds that one of the members of the Investigation Team was Principal of a competing school and had "in the recent past" made derogatory remarks about ESTM and the Applicant Juanita Lucas.

62. On the claim of irrationality by the Minister of Education, Counsel submitted that it is an unsubstantiated speculation for the Claimants to say that the Minister of Education, in appointing the Investigation Team was influenced by the demands of parents and students who wanted ESTM to be purged of PUPs. That such unsubstantiated

speculation about the thought processes of the Minister are improper. There is no evidence of any political bias on the part of the Minister. Instead the Minister of Education made a personal effort to attend the school to attempt to soothe the tensions and advocated that the situation should not be made needlessly political and that due process should be followed. He is quoted as saying, *“All I am saying is that we cannot play politics with education”*. (See **Exhibit JL 6**)

63. In response to the Applicants argument that there was improper delegation of power, as the authority to take disciplinary action under Section 16 of the Education Act and Section 99(3), 99(4) and 99(5) is conferred only to the Managing Authority which in this case is the Board of Management at ESTM, Learned Counsel Mr. Shepherd submitted that section 16 itself confers upon the Chief Education Officer the overarching authority to decide upon appeals from the Managing Authorities of schools and institutions. The power conferred in Section 99(3) of the Education Rules is very similar in providing a route of appeal from the Managing Authority but in this case the Managing Authority has not instituted disciplinary proceedings when the District Council deems that it should do so. The Chief Education Officer under the Education Act currently is an avenue for appeal for teachers unhappy at being subject to disciplinary proceedings. Allowing the District Council to appeal where the Managing Authority has failed to conduct disciplinary proceedings is in fact a natural balancing of power, allowing both sides a route of appeal.

64. In response to the claim of breach of the Claimants constitutional rights, firstly that the Claimants right to a fair trial has been infringed contrary to **Section 6(7)** of the **Belize Constitution**,

Learned Counsel submitted that **section 6(7)** applies to any court or other authority prescribed by law. It does not apply to solely exploratory investigations. The remit given to the Investigatory Team was to determine the cause of the “apparent discontent between the teachers and the administration”. Its’ role was not to “determine the existence or extent of any civil right” as prescribed in the Constitution and it had no authority to make binding decisions only to make recommendations based on the outcome of its investigations. The binding decision was to be made by the Managing Authority of ESTM or by way of appeal to the Chief Education Officer both of whom had a statutory discretion as to whether to accept or reject the recommendations of the investigation.

65. Furthermore, Learned Counsel submitted that even within the investigatory process the Applicants were given the chance to make representations to the Investigatory Team and to answer any allegations that were put to them. Further, Learned Counsel submitted that the Chief Education Officer was empowered by **Section 99(3)** of the Education Rules to suspend the Applicants under **Section 16** of the **Education Act**.
66. In response the Claimants breach of constitutional right to work pursuant to section 15 of the Constitution, Mr. Shepherd submitted that the words “gain his living” speak about the financial remuneration because when the right to work is denied the right to remuneration is denied. That the Claimants right to work is not in any way diminished because the Claimants continued to be paid since 7th April, 2008 to date.

Determination

67. The Claims before the court include Orders for certiorari quashing the decisions of the Chief Education Officer to suspend the Claimants. They also seek reinstatement to their particular post of Principal and Vice-Principal. Further, they are seeking Declarations for Breach of their Constitutional rights and Damages for the violation of their constitutional rights.
68. The Respondents in response deny the claim and say that they are empowered by **Section 99(3)** of the **Education Rules** to suspend the Applicants under **Section 16** of the **Education Act** as the Managing Authority abdicated its responsibilities to take action against the Principal and Vice-Principal.
69. The issues that arise for consideration from the Declarations sought are:
1. *Whether the Ministry of Education acted ultra vires the Education Act and the Education Rules in the appointment of an Investigation Team.*
 2. *Whether the Investigation and Report of the Investigative Team are ultra vires the principles of natural justice.*
 3. *Whether the Investigative Team's Report is illegal and unlawful for breach of the Claimants procedural and substantive legitimate expectation.*
 4. *Whether the Managing Authority abdicated its duties to take disciplinary action against the Principal and Vice-Principal.*
 5. *Whether the Chief Education Officer unlawfully suspended the Claimants.*

6. *Whether the decision of the Chief Education Officer to suspend the Claimants, infringed their rights to a fair trial in violation of sections 6(1) and 6(7) of the Belize Constitution.*
7. *Whether the Chief Education Officer in suspending the Claimants infringed the Claimant's right to work in violation of section 15(1) of the Belize Constitution.*

Issue 1: Whether the Ministry of Education acted ultra vires the Education Act and the Education Rules in the appointment of an Investigation Team.

70. The Claimants claim that neither the Minister of Education nor the Ministry of Education had any legal authority to appoint an Investigating Team on 28th January, 2008 to conduct an investigation into the complaints made by teachers and students of ESTM. The Minister has not denied appointing the Investigating Team.
71. Since both Claims are based on the same facts and issues, I intend to rely mainly on the evidence of Juanita Lucas, Principal of ESTM. In her affidavit sworn to on 18th April, 2008 she deposed at paragraph 17 that at a meeting on February 28th, 2008, Minister of Education, Hon. Patrick Faber, told her that since he became Minister, he has heard a lot of complaints about her and that he would be sending an investigating team to ESTM early in the following week. That on March 3rd, 2008 the Investigation Team, comprised of Mrs. Yolanda Gongora, Director General School Services, Corozal District Education Manager Pedro Kukul, Corozal

Regional Education Council Endeavora Jorgensen, and Belize District Education Officer Mr. Jahmor Lopez went at ESTM.

72. Mr. David Leacock, Chief Executive Officer in the Ministry of Education in response to the claim filed in both Claims 252 of 2008 and 253 of 2008, explained in his third affidavit why it was necessary to conduct the investigation. He deposed that in February 2008, while in a meeting with representatives from the Belize National Teachers Union (“BNTU”) it was brought to his attention that tensions existed on a continuing basis between the administration (Principal and Vice Principal) on the one hand and the teachers on the other hand of ESTM school in the Corozal District. That in the said meeting it was reported that the Heads of Department as well as the teachers of the ESTM had written to the Managing Authority (“the Board”) of ESTM. See Exhibit “**JL4**” for a copy of the letter written to the Board which is exhibited to the First Affidavit of Juanita Lucas.
73. This letter of 8th January, 2008 by the Heads of Department made complaints about the administration to the Board. Mr. Leacock deposed that the Board accepted the letter and reviewed it in the presence of the Principal who was recording the minutes as Secretary to the Board. At paragraph 9 of his affidavit he said that on January 23, 2008, a similar letter was addressed to Narda Garcia, then Chairperson of the Board, which was sent by teachers of ESTM to “*express our absolute solidarity with our five heads of department.*” The said letter was signed by 21 teachers.
74. At paragraph 12 of Mr. Leacock’s affidavit he deposed that in order to discover more about the apparently serious escalating tensions between administration and teachers at ESTM, the Ministry decided

to invite the Principal, Mrs. Juanita Lucas, to a meeting in Belmopan on 28 February, 2008 where she was asked about the situation in her school and the Reports made to the Board both by the Heads of Department and the teachers against her. Mr. Leacock further deposed that Juanita Lucas did not offer an explanation for the tensions in her school particularly between herself and the teachers and heads of department. Instead, she pulled out a document which she quoted from a previous report which was produced before she became the Principal which Report seemed to indicate the things which she addressed as Principal such as lack of discipline at ESTM and she suggested that this may be why teachers were upset.

75. Mr. Leacock further deposed that while in the said meeting, it came to their attention that there was an ongoing “sick-out” at ESTM in that over twenty (20) of the teachers at the school had reported sickness as a reason for their absence from school that day. He further went on to explain that he discovered that as far back as 2005, the Chief Education Officer of the Ministry of Education had directed that an investigation be conducted into the matter of the tensions at the ESTM, which investigation was commenced as a result of similar complaints made by teachers as against the Principal and Vice Principal at ESTM. See Exhibit “**DAL-4**” for a copy of the 2005 Investigative Report which is exhibited to the Second Affidavit of David Leacock dated 9th May, 2008. Mr. Leacock then went into an examination of that report and stated that while they were aware that both the Principal and Vice Principal and the Board had information about the root of the tension at ESTM from as far back as 2005 and that the Board was given letters on the 8th and 23rd of January about the distress of teachers at ESTM, it had not taken any action to investigate the

escalating tensions between administration and the teachers nor to resolve what seemed to be an increasingly unstable and explosive situation.

76. At paragraph 23 he deposed that it was decided on 28th February, 2008 that, in view of the tensions existing in ESTM which precipitated the mass “sick-out”, and in view of the evidence that the Board had failed to address the issues, that an investigation would be required similar to that which took operation in 2005. Further, at paragraph 29 he deposed that an investigating team was therefore sent to the school to conduct its investigations.
77. I have carefully considered all the evidence and it is my view, that there is no doubt that the Minister of Education was concerned about the discontent between the teachers and the Administration when he made the decision to appoint the Investigating Team. However, the question to be asked is whether the Minister of Education acted *ultra vires* the **Education Act** and the **Education Rules** in the appointment of an Investigation Team. The relevant provisions for the court to consider are (i) **section 16** of the **Education Act** which empowers the manager or managing authority of a government aided school to appoint, transfer, release, suspend or dismiss; (ii) **Sections 94 and 98** of the **Education Rules** which provide the process for investigation and disciplinary action, including dismissal and suspension of members of staff of a school.

Section 16 of the Education Act provides:

16. The manager or managing authority of a government or government aided school or institution shall have the authority to appoint, transfer, release, suspend or dismiss

members of staff of their respective schools or institutions subject to the following conditions in so far as same are applicable-

(a)

(b) where the manager or managing authority proposes to terminate the appointment of or to release, suspend or dismiss a teacher, a statement in writing of the grounds for such action shall be served upon such teacher and copied to the Chief Education Officer;

(c) the teacher and/or his agent shall be given a reasonable opportunity to be heard in his own defence and a statement of the findings of the manager or managing authority shall be forwarded to the Chief Education Officer;

(d) every teacher aggrieved by an order of release, suspension, dismissal or termination from service under this section may, within thirty days of the receipt of such order, proffer an appeal to the Chief Education Officer;

...

78. This section does not speak of investigation but as Learned Counsel, Mrs. Young submitted it can be implied that the managing authority has the power to investigate any matter that would require disciplinary action or lead up to disciplinary action. This argument can be supported by the Rules itself.

Rule 94 and **98** of the **Education Rules** provides:

94.(1) *Where the Managing Authority has substantial grounds to believe that it is in the best interest of the students and the school, a teacher or other member of staff may be suspended while the Managing Authority investigates an accusation of misconduct against him. The person is to be informed in writing of the nature of the accusation.*

(2) *Where a teacher or other member of staff is suspended under sub-rule (1) of this Rule, the teacher or other member of staff shall receive full Salary and shall be immediately reinstated without*

prejudice to his position if a formal case is not brought against him within 15 calendar days.

- (3) Where disciplinary proceedings are instituted against a teacher or any other member of staff and where the Managing Authority considers that the interests of the students or school requires that the person immediately ceases to perform his functions, the Managing Authority may interdict the person from duties in which case a written report shall be submitted to the Regional Education Council. The person shall receive a portion of his salary being not less than 50% as approved by the Regional Education Council on the Recommendation of the Managing Authority.*
- (4) Where a teacher or other member of staff is interdicted under sub-rule (3) of this Rule, if the case is not heard within thirty calendar days he shall be immediately reinstated without prejudice either to his status or his emoluments, provided that the teacher or other member of staff has presented himself at each and every scheduled hearing of the charge made against him.*
- (5) Where a disciplinary charge brought against a teacher or other member of staff who is under interdiction has not been established, he shall be immediately reinstated without prejudice either to his status or his emoluments, provided that the teacher or other member of staff has presented himself at each and every scheduled hearing of the charge made against him.*

98. The suspension, release, dismissal or termination of service of a teacher or other member of staff shall be in accordance with Section 16 of the Act.

79. In my view, **section 16** of the Act and **Rules 94** and **98** clearly give the power to the Managing Authority to take disciplinary action which includes suspension. Learned Counsel, Mr. Shepherd submitted that **section 94** of the Education Rules does not limit the power to instigate investigations to the ESTM Board. In my view,

what transpired in this case is more than instigation as there was a clear usurpation of the powers of the Managing Authority by the Investigation Team. See the case of *Barnwell v Attorney General* supra cited by Mrs. Young. I find that pursuant to **section 16** of the **Education Act** and **Rule 94** and **98** of the **Education Rules**, the Ministry of Education is not authorized to appoint the Investigating Team for the purpose of commencing disciplinary action.

80. The Defendants however, in justifying their actions further argued that at the commencement of the Investigation the Managing Authority who has the power to investigate complaints under **section 94** of the **Education Rules** failed to properly investigate the matter. Further, that the Managing Authority has been aware of the tensions that existed at the school for some years as they were in possession of the 2005 Investigation Team Report. To be clear, this Report is not the subject of any issue before the court.
81. The attack that is being launched here is on the Managing Authority of ESTM. The Defendants evidence is that they failed to respond to two letters dated 8th and 23rd January 2008 of complaints about the Principal and Vice-Principal. Further, that they failed to respond in any way to the mass sick-out of teachers which occurred on 28th February, 2008. The question for the Court is whether in fact the Managing Authority has failed to take action, thereby justifying any actions taken by the Ministry of Education. The evidence of Narda Garcia which I find to be credible refutes any failure by the Board to take action with regards to the complaints received against the administration.
82. Nardia Garcia in her witness statement stated that in 1999 she was appointed the Chairperson of the Board of Directors of ESTM by

the then Minister of Education and she remained the Chairperson of that Board up until February, 2008, when she resigned her position because she was the wife of the People's United Party's candidate for the Corozal Southwest and she did not want ESTM or its administration to suffer politically because of her appointment to the board of ESTM.

83. Mrs. Garcia explained that Mr. Worrell remained the principal of ESTM from 2002 up to 2004 but that during his tenure, ESTM faced many issues due to his maladministration, so much so that in 2004, they asked the Ministry of Education to intervene and to conduct an investigation into some very serious allegations proffered against Mr. Worrell by ESTM teachers and students. There was a complete breakdown of discipline and moral at ESTM during Mr. Worrel's tenure and the Ministry of Education sent senior members from the said Ministry in early 2004 to conduct an independent investigation into the complaints by ESTM teachers and students of Mr. Worrel's administration.
84. Mrs. Garcia went on to state that before the said investigation was conducted and the report was prepared, the ESTM Board after hearing the complaints from teachers, suspended Mr. Worrell on the 25th day of February, 2004. They were thereafter advised by senior members of the Ministry of Education that they needed to adhere to the principles of natural justice and to put the charges against Mr. Worrell and then hear him out, conduct an interview with the teachers and students, and then make a determination. They therefore rescinded their letter of suspension and then proffered in writing the charges to Mr. Worrel and gave him a hearing, specifying the charges made against him so that at the hearing they specifically asked him about the charges and

complaints. He was fully interviewed by the Board. They then suspended him on the 15th day of March, 2004, and thereafter invited the Ministry of Education to assist them with investigating the charges independently, as a separate and impartial body. The Ministry of Education's investigative team then prepared a report, and ultimately the ESTM Board dismissed Mr. Worrell as principal.

85. Mrs. Garcia in further evidence stated that Mrs. Lucas was hired as Principal and she inherited a school that was facing serious disciplinary issues and a breakdown in administration and morale. That when Mrs. Lucas was appointed she stressed that she wanted her to focus on discipline, putting in place school policies and systems, and to improve the curriculum and general upkeep and repairs of the school. She stated that shortly after hiring Mrs. Lucas, Mrs. Celia Carillo was hired as Vice Principal.

86. At paragraph 10 of her witness statement, Mrs. Garcia explained the new rules and administrative policies put in place by the new Principal, Mrs. Lucas. Thereafter, the ESTM Board kept hearing informal complaints by teachers, who resisted the new rules imposed by Mrs. Lucas and the new reporting requirements and the academic push by her. They would require the complaining teachers to file formal complaints so that the ESTM Board would hear the same and address them accordingly, but no complaint was formally lodged until the 8th January, 2008. She stated that the Board called a meeting after receiving the 8th of January, 2008 complaint that was signed by heads of departments, and decided they would call a further meeting without Mrs. Lucas being present so that they may hear the teachers' complaints.

87. At paragraph 13 of her witness statement, Mrs. Garcia stated that the ESTM Board held a meeting on the 15th day of January, 2008, without Mrs. Lucas and they heard the complaints by the Heads of Departments, and then went to visit ESTM on the 23rd day of January, 2008, to address the concerns with Mrs. Lucas and Mrs. Carillo. Thereafter, they received a letter from Pitts & Elrington, Mrs. Lucas attorneys-at-law, who requested to be present when the ESTM board held any formal enquiry as to the complaints proffered by the teachers. Mrs. Garcia further stated that because of the impending general elections that were held on the 7th day of February, 2008, no further meeting was held with Mrs. Lucas and Mrs. Carillo, and after the said elections she resigned as Chairperson of the said board.
88. The evidence of Adrian Cowo corroborates the evidence of Nardia Garcia. In his witness statement he stated that he was appointed a board member of the ESTM board in 2005 and remained a member until he was summarily removed as board member by the Ministry of Education in 2008, after the general elections. He stated that at an ESTM Board meeting on the 9th day of January , 2008, the Principal presented a letter of complaint dated 8th January, 2008 forwarded by the Heads of Department to the Board complaining about being stressed and overworked. At the Board, they agreed that they would invite the heads of department to another ESTM board meeting to be held without Mrs. Lucas' presence.
89. At paragraph 7 of his witness statement he stated that the ESTM Board held a meeting on the 15th day of January, 2008, without Mrs. Lucas and they heard the complaints by the Heads of Departments, and they agreed that the Chairperson would visit

ESTM to address the concerns with Mrs. Lucas and Mrs. Carillo. They did not feel that the complaints at that stage merited immediate disciplinary action, because at the ESTM Board level, they witnessed vast improvements in the infrastructure and academics at ESTM and they were all aware that the older teachers were resisting some of the changes Mrs. Lucas sought to implement, with a view to improving the school.

90. The evidence of Mrs. Garcia and Mr. Cowo which I find credible proves that the Board did meet on 15th January, 2008 after receiving the letter of complaint dated 8th January, 2008. That the Board thereafter visited ESTM on 23rd January, 2008 to address the concerns raised with the Administration. At that meeting they received a letter from Mrs. Lucas attorney who requested to be present when the ESTM Board held any formal enquiry. The Board unfortunately could not meet immediately after that due to the impending general elections on 7th of February, 2008. What transpired after was the resignation of the Chairman of the Board. Thereafter, the Deputy Chairman also resigned.

91. I find from the evidence of Mrs. Garcia and Mr. Cowo that the Managing Authority/ Board did not fail to respond to the letters of complaints from the Teachers. The Ministry of Education therefore is not justified for taking matters into their own hands to appoint an investigating team and without being asked to do so by the Board. Further, **section 16** of the **Education Act** and **Rules 94** and **98** of the **Education Rules** clearly give the power to the Managing Authority to take disciplinary action which includes suspension. As such, I find that the appointment of the Investigative Team by the Ministry of Education was illegal and *ultra vires* the **Education Act** and the **Education Rules**.

92. A question for the court that follows from this issue is whether the Minister acted arbitrarily and irrationally in appointing the Investigating Team. I respectfully disagree with Learned Counsel, Mrs. Young that the Minister was influenced by the demands of parents and students who wanted ESTM to be purged of the PUPs. I have carefully considered the evidence and found that the Minister was not influenced in any way by the parents and students. In fact, the Minister said that, “*All I am saying is that we cannot play politics with education*”. **See Exhibit “JL 6”**. I am in agreement with the submission of Learned Counsel, Mr. Shepherd that there is no evidence of political bias on the part of the Minister.
93. The evidence shows that the Minister went to ESTM in order to bring some calm to the high tensions and said that the situation should not be made needlessly political and due process should be followed. The Minister, as the evidence suggests seem to think that the Board of Management was not taking the matter into their hands and so sought to control the situation, though wrongly so. I however, find no evidence that the Minister acted arbitrarily and irrationally.

Issue 2: Whether the Investigation and Report of the Investigative Team are ultra vires the principles of natural justice.

94. Mrs. Young submitted that the Investigation Team’s procedure and Report are *ultra vires* the principles of natural justice and a right to a fair hearing. At paragraphs 19 and 20 of Mrs. Lucas first affidavit she deposed that on March 3rd, 2008 the Investigation Team went to ESTM where they held a meeting with Heads of

Department, in the absence of Mrs. Celia Carillo, the Deputy Vice-Principal and herself. Thereafter, on March 4th, 2008, interviews were held by the Investigation Team with the teachers, one at a time.

95. Mrs. Lucas further deposed at paragraph 24 that on March 11th, 2008 at 10:00 a.m. the Investigation Team met with Mr. Pitts, her then attorney-at-law and herself, and asked very general questions about the management policies at ESTM and her overall experience and questions such as: *How do you handle lesson planning? Do you have an active PTA? Do you have a student council? How is your agriculture program? How do you provide assistance to new teachers?* She further deposed that no accusation or complaints by teachers or students were communicated to them and she was not asked to answer to any charges or accusation of misconduct.

96. At paragraph 25 of the said affidavit, Mrs. Lucas deposed that School at ESTM closed March 14th, 2008 for Easter break to reopen March 31st, 2008. On March 26th, 2008, Dr. Joe Myers gave her an unsigned copy of the Report by the Investigation Team, and he invited her to a Board meeting at 6:30 p.m. on March 27th, 2008 at the Education Center, ESTM. Further, at paragraph 21 she stated that on April 1st, 2008, the Corozal Regional Education Council (CREC), to whom the Ministry of Education had referred the matter of the report's finding, had written a letter based on the Report's findings and based on certain letters written to them from heads of departments, recommending that she be put on leave with pay to allow full investigation of the situation.

97. Mrs. Lucas and Mrs. Carillo were put on leave with pay as a result of the findings of the said report. The evidence shows that the Claimants were not told of the complaints made against them by the students and teachers when they were interviewed by the Investigative Team. I do agree with Mr. Shepherd that they were aware from letters written by the Heads of Department and Teachers of the thrust of the complaint. However, the evidence of the Claimants which I find credible proves that the Investigative Team did not put any complaints to them but interviewed the Principal about management of the school. I agree with Mrs. Young that the Investigative Team did not proffer any accusations made by students or teachers when they interviewed the Principal and Vice Principal on 11th March, 2008.
98. The question to be asked is whether the Claimants were entitled at this stage to be told by the Investigative Team about the complaints and given an opportunity to answer them. The procedure to be followed as can be seen above is statutorily provided for in the **Education Act** and the **Education Rules**. It does not exclude a hearing at the initial stage. Further, the Act does not empower the Ministry of Education to do an investigation for the purposes of disciplinary action. Even further, there is no evidence that the Board of ESTM requested the Ministry of Education to do the investigation.
99. I do agree with Mr. Shepherd that the purpose of the investigation was not to conduct a trial but to ascertain the causes of the tension between the staff and the administration of ESTM. But, if one looks at the Report the Investigating Team went further than just investigation. This Investigation as can be seen by the Report condemned and criticized Management and it made

recommendations. Further, the evidence shows that the report was discussed in the media. See the Report at J.L. “11” exhibited to the first affidavit of Mrs. Juanita Lucas. The ‘**Concluding Remarks and Recommendations**’ of the Report states:

....

In a valiant effort to change things at the school, the administrators have created new problems, which are numerous. Administrators apparent lack of human compassion and concern for teachers and students has eroded the relationship, which appears to have become irreparable and calls for immediate intervention on the part of the Board of Management to resolve the situation.

The team recommends that:

- 1. The Board of Management (the managing authority appointed by the Ministry of Education) must meet to review the findings of this report and to take appropriate decisions and actions to resolve the matter.*

This in my view, is not just an investigation as it condemned and made recommendations.

100. The case of ***Furnell v Whangarei High Schools Board (1973) AC 660*** cited by Mr. Shepherd where it was held that there was no breach of natural justice when a teacher was suspended by the Board without giving him an opportunity to deal with the charges made against him can be distinguished from the case at hand. In the ***Furnell case supra*** it was held that one of the principles of natural justice was that a man should not be condemned unheard,

but the sub-committee neither condemned nor criticized. In the case at hand, however, as can be seen above the Investigating Committee usurp the functions of the Board, condemned and criticized Management and thereafter make recommendations to the Board. To do this, without giving the Claimants an opportunity to be heard, in my view is a breach of natural justice. Further, the Investigating Committee as stated above, had no authority under the Act to do the Investigation. This was the function of the Managing Authority. **Section 16 (b)** provides that a statement in writing should be given to the Teacher stating the grounds for the suspension and then the Teacher is given a reasonable opportunity to defend herself. **Rule 94** of the **Education Rules** provide that the teacher must be informed of the nature of the accusation. It states:

*94.(1) Where the Managing Authority has substantial grounds to believe that it is in the best interest of the students and the school, a teacher or other member of staff may be suspended while the Managing Authority investigates an accusation of misconduct against him. **The person is to be informed in writing of the nature of the accusation.***

101. The Claimants were not informed of the nature of the accusation. I disagree with Learned Counsel, Mr. Shepherd that the Investigating team in interviewing the Claimants made them aware of the complaints made against them. The evidence proves that they were not told of specific complaints when they were interviewed. I find that the Claimants were not informed in writing or orally before their suspension of the accusations by the Teachers against them which is in breach of both the **Education Act** and the **Education Rules**.

102. Learned Counsel, Mr. Shepherd in his arguments further relied on the case of **Rees and Others v Cane** *supra* and submitted that when officers are suspended the rules of natural justice do not always apply at every instance. I do agree with this principle as in some cases a disciplinary body at an early stage would have to be satisfied that a complaint against a person is serious enough before taking any action. However, in the case at hand, what transpired was an Investigation where the Claimants and Teachers were interviewed and then a Report was prepared which condemned and criticized the Claimants. The Claimants were then suspended as a result of the Investigative Report. To make matters worse, the decision to suspend the Claimants was broadcasted in the media. Can anyone say that there was no damage to the reputation of the Claimants who are Principal and Vice-Principal of ESTM? I think not. It is difficult to say that natural justice should not have applied at this stage of the investigation. In my view, the Claimants should have been given the specificity of the complaints and given an opportunity to respond before the Report was prepared. Further, the statutory scheme in this case which is the **Education Act** and **Education Rules** does not exclude the right to know and reply at an early stage.
103. I find that the Investigation by the Investigation Team is *ultra vires* the principles of natural justice as the Claimants were not told of the complaints against them and given an opportunity to respond to same.
104. It follows that the Report and its subsequent referral to the CREC is also illegal and unlawful as it is tainted with an unlawful investigation. See the case of **Barnwell** *supra* where Bishop CJ as he then was found that the decision of the JSC to represent and

the representation made by that body to the President are nullities by virtue of the fact that that the appellant was not afforded a 'fair hearing' by the JSC pursuant to articles 144(8) and 40(1) (a) of the Constitution. He then stated that , *"It follows that everything that flows from such decision and representation are nullities 'as you cannot add nothing to nothing' and get something (see MacFoy v United Africa Co. Ltd. (1961) 3 All ER 1169).*

Issue 3: Whether the Investigative Team's Report is illegal and unlawful for breach of the Claimants procedural and substantive legitimate expectation.

105. The Claimants say the Investigative Report breached their procedural and substantive legitimate expectation that they would have been heard in camera by the managing authority or persons appointed by them during their investigations. Further, that they would have been questioned about the allegations and given an opportunity to respond. The evidence before the court shows that the investigation was done openly and publicized in the media. See the evidence of both Claimants.

106. I disagree with Learned Counsel Mr. Shepherd's submission that the Claimants were given the chance to fully explain their position and to defend themselves against any allegations. The evidence before this court proves otherwise. The court has to look no further than the suspension letter from the Chief Education Officer which states:

.....

By April 22, 2008 you will be informed of specific allegations, if any are to be brought against you. In that case, you will be afforded the opportunity to be heard in your own defense in the presence of your agent.

107. I accept the submissions by Mrs. Young on legitimate expectation which Learned Counsel submitted derived from the previous conduct of the ESTM Board and the Ministry of Education when an investigation was conducted in 2004. See **JL 25 to JL 34** exhibited to Mrs. Lucas affidavit of 22nd May, 2008. A legitimate expectation may arise from a past practice as happened in **R v Secretary of State for the Home Department , ex parte Khan (1985) 1 ALL ER 40**. Lord Diplock in **O'Reilly v Mackman (1983) 2 AC 237** stated that *Legitimate expectation may arise either from an express promise given on behalf of a public authority or from the existence of a **regular practice which the Claimant can reasonably expect to continue***. The Claimants expected that the Investigation would have followed the procedure followed in the 2004 investigation.
108. In my view, based on past investigations, the Claimants had a legitimate expectation that any Investigative Team appointed would have been by the Managing Authority (Board) and that such team would have specifically informed the Claimants of any accusations by the Heads of Departments and other Teachers of ESTM and given them an opportunity to respond. Further, the Claimants had a legitimate expectation that the said Investigating Team would have acted fairly and also the investigations would have been done in camera. In **Council of Civil Service Unions v Minister for the Civil Service (1984) 3 All ER 935** Lord Roskill pointed out that legitimate expectation is a manifestation of the duty to act fairly.
109. I do not find it necessary to consider the allegation of bias as the Managing Authority did not appoint the Investigation Team or

authorize the Investigation. In any event, there is not sufficient evidence to prove the allegation of bias.

110. I find that the Investigative Team's Report is illegal and unlawful as the Committee breached the Claimants procedural and substantive legitimate expectation that the past practice of Investigations by the Managing Authority would have continued.

Issue 4: Whether the Managing Authority abdicated its duties to take disciplinary action against the Principal and Vice-Principal

111. The Board was given a directive by the Ministry of Education to discuss the findings of the Investigative Report and to resolve the issue promptly. They were unable to arrive at a decision immediately as there was no time to study the report and to do their own investigation. As a result, the Defendants say that the Board which is the Managing Authority of ESTM abdicated its duties to take disciplinary action against the Principal and Vice-Principal. An examination of the Minutes of the Board Meeting reflects that the Board was not given adequate time to deal with the situation and in my view, does not amount to a failure to act. The Minutes of the Meeting held on the 27th March, 2008 shows the following:

....
1.2 *Dr. Myers began the meeting by reading a letter he received from the Chief Education Officer of the Ministry of Education. He was given a directive to discuss the findings of the investigation and to resolve the issue promptly.*

1.3 *Mr. Martinez then claimed that he was not given enough time to review the report.....*

1.5 *Mrs. Morales stated that she needed more time to read the report to give it proper thought that it requires.*

1.6 *Mr. Kukul stated that the Board is the managing authority and needs to determine which members need more time to read and analyze the information presented in the report.*

1.7. *Mr. Martinez mentioned that he was not included in the report and that he was unaware of the investigation, so he decided that he would have no part in the discussion of the report. He thereafter agreed that he was invited to the meeting that was held between the Board of Directors and the investigative team.*

1.8 *Mr. Puck stated that he believes that the Board should not discuss the report at this particular meeting because the decision is too prompt and requires more dialogue. He believes that it will take more time to arrive at a good solution for all parties involved.*

1.9 *Mrs. Morales stated that she needs to see more evidence to the allegations stated in the report...*

.....

3.1 *Dr. Meyers then stated that if nothing can be done at the meeting then he would resign as a member of the Board. He then proceeded to give Mr. Kukul his letter of resignation.*

...

3.8 *Dr. Meyers then called the Principal back into the meeting at 8:45 p.m. and told Mrs. Lucas that the Board did not reach a consensus and no decision was made. This was so because none of the parties involved wanted dialogue, so he recommended that the Ministry resolves the situation. He also related to her that he had resigned from the Board and gave her a copy of his resignation letter.*

3.9 *Mr. Puck moved that the Ministry take their findings and make their own decision. This motion was supported by Mr. Martinez, Mr. Keme, Mr. Cowo, Mrs. Morales.*

4.0 *Mr. Puck moved that the meeting be adjourned..*

112. As reflected in the Minutes of the Meeting, the Board though given a directive by the Ministry of Education *to discuss the findings of the investigation and to resolve the issue promptly could not do so because members* of the Board needed more time to study the report and no decision was taken by them in respect to the Report. I disagree with Learned Counsel Mr. Shepherd that the Board abdicated its responsibility and that the Chief Education was forced to recourse to the CREC under **section 99(3)** because of the Board's referral of decision making to the Ministry of Education. It was unreasonable for the Ministry of Education to request the Board to make a decision on the spot without giving them an opportunity to do their own investigation.
113. Mr. Puck at the end of the meeting moved that the Ministry take their own findings and make their own decision and it was supported by four members. This in my view was not a decision by the Board and it was certainly not a decision to suspend the Claimants. The evidence shows that at this time the Chairman, Narda Garcia had resigned and the Vice-Chairman had also resigned. The other members of the Board could not resolve the issue promptly on a report which they themselves did not investigate. I do agree with Mrs. Marin- Young that all the Board needed was more time. In my view, the Board did not surrender its right to conduct its own investigation and there was no abdication of duties by the Board. As such, I find that the Managing Authority did not abdicate its duties to take disciplinary action against the Principal and Vice-Principal.

114. But, even if I am wrong, that the decision by Mr. Puck does not amount to a decision of the Board and consequently an abdication of duties by the Board, a question that comes to mind is whether the Board could lawfully delegate its duties to the Ministry of Education. I think not. There is no provision in the **Education Act** and **Rules** which empowers the Managing Authority to delegate its duties. See also, **Administrative Law, Wade and Forsyth, 10th Edition p. 259** relied on by Mrs. Young where the learned author said, “*An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else.*” As such, I find that the Managing Authority could not lawfully delegate its duties to the Ministry of Education.

Issue 5 : Whether the Chief Education Officer unlawfully suspended the Claimants.

115. Mrs. Lucas at paragraph 31 of her first affidavit deposed that on April 1st, 2008, the CREC to whom the Ministry of Education had referred the matter of the Report’s finding, had written a letter based on the said findings of the Report (and based on certain letters written to the CREC from Heads of Departments) recommending that she be put on leave with pay to allow full investigation of the situation. See exhibit “**JL 13**” for a copy of the letter of the CREC to the Chief Education Officer. This letter from the CREC states that:

....

On April 1st, 2008 the Corozal Regional Education Council held an

Extraordinary meeting to discuss the on going instability at Escuela Secundaria Tecnica Mexico.

Based on the report from the investigating team of Ministry of Education and letters addressed to the REC from Heads of Departments of ESTM, the REC hereby submits the following:

1. Whereas the Corozal Regional Education Council (REC) feels that the problem at Escuela Secundaria Tecnica Mexico has escalated and reached an emergency situation and that the school will not be able to operate smoothly if the Principal and Vice-Principal are physically present and;
2. Whereas the students, especially the fourth formers, are adversely affected;

The REC is fully convinced that the Ministry should intervene immediately and appropriately to solve the problem.

Recommendations

1. *The Principal and Vice Principal should be put on leave with pay to allow full investigation to the situation at ESTM.*
2. *That the Ministry appoints an acting principal and a vice principal to run the affairs of the school while the principal and vice-principal are on leave.*

116. As a result of this recommendation, on April 7th, 2008, the Principal received a letter from the Chief Education Officer, Ms. Maud Hyde, informing her that she was being suspended. See Exhibit “**JL 17**” for a copy of the said letter which states:

In accordance with Chapter 1 Section 2 Rule 99(3) of the Handbook of Policies and Procedures for School Services, the Corozal Regional Education Council has written to me expressing dissatisfaction with the ongoing situation at Escuela Secundaria Tecnica Mexico. The discontent between administration and staff has escalated to an emergency situation at the school which is adversely affecting the students, especially fourth formers.

In reviewing the case and the Council's recommendations (see attachment), I am of the opinion that your continued presence at the school in the short term will not allow classes to continue uninterrupted. I have therefore decided that you be placed on suspension with effect from April 8, 2008 for a period of thirty (30) days with full pay to allow the school to continue uninterrupted. You are requested to hand over all keys, documents and other materials belonging to ESTM to the District Education Manager, Mr. Pedro Kukul in the presence of Ms. Yolanda Gongora, by 3:30 pm today, April 7, 2008.

By April 22, 2008 you will be informed of specific allegations, if any, are to be brought against you. In that case, you will be afforded the opportunity to be heard in your own defense in the presence of your agent.

Sincerely

*Maud Hyde (Ms)
Chief Education Officer.*

117. Mrs. Lucas in her third affidavit deposed that on May 7th, 2008 she received a further letter from Maud Hyde, Chief Education Officer, extending her suspension as Principal of ESTM. **See “JL 24”** for a copy of the said letter.
118. Ms Celia Carillo was also given similar letters. On April 7th, 2008, she received a fax from the Ministry of Education suspending her as vice principal. See Exhibit **“CC 11”** for a copy of the said letter. She also received a letter extending that suspension. See **Exhibit “CC 19”** of her third affidavit for a copy of the letter.

119. The evidence shows that the Chief Education Officer acted on the letter of the CREC who she said acted in accordance with Chapter 1 **Section 2 Rule 99(3)** of the Handbook of Policies and Procedures for School Services, the Corozal Regional Education Council. Rule 99 provides as follows:

99. (1) *Where disciplinary measures taken involve release, suspension, dismissal or termination of service and the teacher or other member of staff appeals the decision to the Chief Education Officer in accordance with Section 16 of the Act, the Chief Education Officer shall refer the appeal to the relevant Regional Council for its recommendation on the case.*

(2) *Where disciplinary measures taken do not involve release, suspension, dismissal or termination of service the teacher or other member of staff may appeal the decision to the Chief Education Officer who shall refer the appeal to the relevant Regional Education Council and whose decision thereon shall be final.*

(3) ***A District Council which is dissatisfied by the decision of a Managing Authority not to institute disciplinary proceedings which the district Council deems warranted under these Rules or with the level of disciplinary action taken against a teacher or other member of staff by the Managing Authority shall inform the Chief Education Officer of the basis of its dissatisfaction and of its recommendation on the matter. The Chief Education Officer shall review the case and determine what actions, if any, are to be taken.***

(4) *Where the aggrieved teacher is not satisfied with the decision of the Chief Education Officer taken as a result of sub-rule (1) of this Rule or where disciplinary measure is taken as a result of sub-rule (3) of this Rule, the teacher or other member of staff may*

appeal the decision to the Arbitration Panel through the council.

(5) Appeals shall be made on the form prescribed for this purpose. A copy of the prescribed form shall be included in the Handbook of Policies and Procedures for Scholl Services.[emphasis added]

120. I have carefully perused the **Education Act** and the **Rules** and it appears to me that although the Rules at **Rule 99(3)** gives the Chief Education Officer full power to take action when the Board fails to act there is no such provision in the Education Act itself. The power to suspend is clearly given to the Managing Authority as provided in **section 16** of the **Education Act** and not the Chief Education Officer. Where the Rules are inconsistent with the Act, the Act prevails. The Rules cannot override the Act.
121. Even if I am wrong, and the Chief Education Officer has the power to suspend, there is no evidence that the District Council was dissatisfied by any decision of a Managing Authority not to institute disciplinary proceedings as envisaged by **Rule 99(3)**. Further, there is no evidence also that the CREC informed the Chief Education Officer of the basis of its dissatisfaction. The evidence before the court is that the CREC acted on the Report from the investigating team which the court found to be *ultra vires*. The CREC informed the Chief Education Officer that, *“Based on the report from the investigating team of Ministry of Education and letters addressed to the REC from Heads of Departments of ESTM, the REC hereby submits...”* and it thereafter made its recommendation to suspend the Claimants.
122. The CREC stated that since the School has escalated and reached an emergency situation and that the school will not be able to

operate smoothly if the Principal and Vice-Principal are physically present, they should be suspended. There is absolutely no evidence from the CREC complaining to the Chief Education Officer of dissatisfaction of a decision taken by the Managing Authority or the basis of its dissatisfaction. What the evidence shows is the Managing Authority was not given the opportunity to do its investigation.

123. Even further, as stated above, the CREC acted upon a report which is ultra vires. Therefore, the referral by the CREC to the Chief Education Officer is also tainted and invalid. For all these reasons, I find that the Chief Education Officer acted unlawfully in suspending the Claimants.

Issue 6 : Whether the decision of the Chief Education Officer to suspend the Claimants, infringed their rights to a fair trial in violation of sections 6(1) and 6(7) of the Belize Constitution.

124. The Claimants claim a Declaration that the decision of the Chief Education Officer suspending them from their job at ESTM infringes their right to a fair trial in violation of **sections 6(1) and 6(7) of the Belize Constitution**. **Section 6(1) of the Belize Constitution** provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Section 6(7) of the **Belize Constitution** provides:

6 (7) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a

court or other authority, the case shall be given a fair hearing within a reasonable time.

125. I am in agreement with Learned Counsel, Mr. Shepherd that section 6(7) does not apply to exploratory investigations. The Investigating Team appointed by the Minister is not a court and is not an authority prescribed by law. The Managing Authority of ESTM is the authority prescribed by law to make a decision to suspend which can be appealed to the Chief Education Officer. The Chief Education Officer has no authority prescribed by law to make a final determination of the existence of a right as envisaged by **section 6(7) of the Constitution**. Further, there was no proceedings before the Chief Education Officer where a hearing was required for the determination of any right of the Claimants.
126. The case of ***Barnwell v Attorney General*** supra relied on by Mrs. Young can be distinguished from the case at hand. This case concerns a Judge, who was constitutionally protected and was suspended from office under **Article 197(7) of the Constitution**. It was held inter *alia* by the Appeals Court that the decision of the Commission to make representations to the President with regard to investigating the possible removal of the appellant from office under **article 197(5)** was *ultra vires* and void because the Chairman of the Commission had no authority under article 199 or any other provision of the Constitution to act on its behalf and his action was *ultra vires*.
127. The procedure for removal in this case is provided for in the **Education Act** and the **Education Rules** and the court found in favour of the Claimants as the Chief Education Officer acted in

breach of the said statutory provisions. However, I am not convinced that the Chief Education Officer infringed the Claimants rights to a fair trial in violation of **sections 6(1) and 6(7)** of the Belize Constitution.

128. Further, I disagree with Learned Counsel, Mrs. Young's arguments that the Chief Education in suspending the Claimants was performing a public function within **section 6(7)** of the **Constitution**. In my view, **section 6(7)** of the **Constitution** is inapplicable to this case.
129. Accordingly, I find that the decision of the Chief Education Officer to suspend the Claimants did not infringe their rights to a fair trial in violation of **sections 6(1) and 6(7)** of the **Belize Constitution**.

Issue 7: Whether the Chief Education Officer in suspending the Claimants infringed the Claimants right to work in violation of section 15(1) of the Belize Constitution

130. The Claimants claim Declarations that the Chief Education Officer in suspending them from their job at ESTM infringes their right to work in violation of **section 15(1)** of the **Belize Constitution**. Section 15(1) of the Belize Constitution provides:

15.-(1) No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise.

(2) It shall not be inconsistent with subsection (1) of this section to require, as a condition for embarking upon or continuing work, the payment of professional fees, trade or business licence fees, or similar charges, or the possession of appropriate licences or qualifications.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-

- (a) that is required in the interests of defence, public safety, public order, public morality or public health;*
- (b) that is required for the purpose of protecting the rights or freedoms of other persons; or*
- (c) for the imposition of restrictions on the right to work of any person who is not a citizen of Belize.*

131. It has been proven above that the Claimants were suspended in violation of **section 16** of the **Education Act**. However, the Claimants continued to be paid their full salary although it was not a final determination as in the case of a dismissal. In fact, the Chief Education Officer mentioned in the letter of suspension that the Principal and Vice-Principal will be informed of specific allegations if any are to be brought. In my view, though there is a breach of the provisions of the Education Act, I do not agree with Mrs. Young that the Claimants were denied the right to work in violation of **section 15(1)** of the **Constitution**. The Claimants are receiving their full salary and the reasons they continue to do so for such a long time without working is because of the letter received from the Attorney for the Claimants and subsequently the present claim before the court. The Board could not continue with disciplinary process.

132. The case of ***Maria Roches v Attorney General Supreme Court Action No. 132 of 2004*** and the appeal case, ***Clement Wade et al v Maria Roches Civil Appeal No. 5 of 2004*** relied on by Mrs. Young can be distinguished from the case at hand. In that case Ms. Roches was dismissed from her job as a teacher on the ground of her having been pregnant without being married which the court declared to be a violation of her constitutional rights under section

16(2) of the Constitution. Further, the Respondent, the Managing Authority of Catholic Public Schools had failed to reinstate Ms Roches after being instructed to do so by the Chief Education Officer. The court declared this refusal as not in keeping with the statutory duties of Respondent and constitute as well an infringement of Ms. Roches right to work as provided for in section **15(1) of the Constitution.**

133. In the case at hand, there is no evidence of discrimination against the Claimants by the Defendants. Further, the Claimants in this case were not dismissed as in the case of Ms. Roches. To date, the Claimants are receiving their full salary and no order was made for their reinstatement.
134. As such, I find that the Chief Education Officer in suspending the Claimants did not infringe their right to work in violation of **Section 15(1) of the Constitution.**

Damages

135. The findings of this court is that there was no breach of the constitutional rights of the Claimants. However, the court did find that the suspension of the Claimants were illegal. The question for the court is whether the Claimants are entitled to any damages. The court cannot lose sight of the fact that both Claimants continued to receive their full salary even after their suspension expired. However, both Claimants gave evidence that they did not receive any increments during the time of their suspension. Neither of the Claimants gave any evidence of the amount of such financial loss. In the circumstances, no award of damages will be made.

136. **Conclusion**

The findings of the Court are:

I find that the appointment of the Investigative Team by the Ministry of Education was illegal and *ultra vires* the **Education Act** and the **Education Rules**. However, there is no evidence that the Minister acted arbitrarily and irrationally.

I find that the Investigation by the Investigation Team is *ultra vires* the principles of natural justice as the Claimants were not told of the complaints against them and given an opportunity to respond to same. It follows that the Report and its subsequent referral to the CREC is also illegal and unlawful as it is tainted with an unlawful investigation.

I find that the Investigative Team's Report is illegal and unlawful as the Committee breached the Claimants procedural and substantive legitimate expectation that an Investigating Team would have been appointed by the Managing Authority of ESTM and they would have acted fairly.

I find that the Managing Authority did not abdicate its duties to take disciplinary action against the Principal and Vice-Principal.

I find that the Chief Executive Officer acted unlawfully in suspending the Claimants.

I find that the decision of the Chief Education Officer to suspend the Claimants did not infringe their rights to a fair trial in violation of **sections 6(1) and 6(7) of the Belize Constitution.**

I find that the Chief Education Officer in suspending the Claimants did not infringe their right to work in violation of **Section 15(1) of the Belize Constitution.**

Though my findings is that the suspension is unlawful, I am unable to make an order reinstating the Claimants to their post as Principal and Vice-Principal of ESTM as it would not be in the best interest of the administration of ESTM and of the Claimants themselves. To put them back into a hostile environment could have the same impact as before as the Claimants themselves in their evidence stated that the situation at ESTM affected them professionally, emotionally and socially. Instead, the Managing Authority should promptly proceed to comply with **section 16 of the Education Act** which ensures that a Teacher have due process before they are released, suspended or dismissed.

137. Accordingly, the following declarations and orders are made:

(a) An order of certiorari quashing the decisions taken the 7th day of April, 2008 by Maud Hyde, Chief Education Officer, unlawfully suspending the Claimants, Juanita Lucas, as Principal and Celia Carillo as Vice-Principal of Escuela Secundaria Tecnica de Mexico (ESTM), based on recommendations from the Corozal Education Regional Council;

- (b) An order of certiorari quashing the decision taken the 7th day of May, 2008 by Maud Hyde, Chief Education Officer, unlawfully extending the suspension of the Claimants Juanita Lucas, as Principal and Celia Carillo, Vice-Principal of Escuela Secundaria Tecnica de Mexico (ESTM).

- (c) A Declaration that the appointment by the Ministry of Education on the 28th February, 2008 of the “Investigation Team” concerning complaints against the Claimants by ESTM teachers, and the investigation by the said Investigation Team, their subsequent report and the referral of the said Report by the Ministry of Education to the CREC, are illegal and unlawful.

- (d) A Declaration that the referral by the Ministry of Education on April 2nd, 2008, of the Investigation Team’s Report to the Corozal Regional Education Council for a decision and recommendation, after the ESTM Board of Directors could not promptly make a decision on the said Report, is unlawful and *ultra vires* the **Education Act** and **Rules**.

- (e) A Declaration that the investigation and the Report of the Investigation Team appointed by the Minister of Education, dated March 11th - 13th, 2008” is illegal and unlawful because the proceedings of the said Investigation Team breached the Claimant’s right to be heard.

- (f) A Declaration that the Report of the Investigation Team is illegal and unlawful as the said Committee breached the

Claimants procedural and substantive legitimate expectation that an Investigation Team would have been duly appointed by the Managing Authority of ESTM and they would have acted fairly during the investigation.

(g) It is ordered that the Managing Authority should promptly proceed to comply with **section 16** of the **Education Act** in taking any disciplinary action against the Claimants.

(h) The Defendants to pay the prescribed costs of the Claimants.

Dated this 13th day of October, 2010

.....

Minnet Hafiz-Bertram
Supreme Court Judge