



# Gregory P. B. Nicholls

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ATTORNEY-AT-LAW

30<sup>th</sup> September 2019

The Attorney-General  
Webster Business Park  
St. Michael

**Attention: The Hon. Mr. Dale D. Marshall, Q.C., M.P.**

**Re: (1) Claim No. CV0987/2017- Pedro Shepherd et al v The Permanent Secretary,  
Ministry of Education**

**(2) Claim No. CV.0912/2017- Mary Anne Redman et al v The Permanent Secretary,  
Ministry of Education**

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I refer to the instant High Court Actions in which I act for the Claimants on applications for judicial review of the process by which certain administrative acts on the part of **Permanent Secretary, Ministry of Education** have been challenged by way of the process of judicial review under the Administrative Justice Act, Cap. 109B of the Laws of Barbados.

There is some similarity in both matters and given that there has been no Defence filed in either case and your earlier indication that the Defendant in the Mary Anne Redman matter is not likely to contest the proceedings for judicial review, I am writing to expedite the settlement and disposition of these matters before the Court.

**(1) Claim No. CV0987/2017- Pedro Shepherd et al v The Permanent Secretary,  
Ministry of Education**

In this matter, the Claimants, as members of the Barbados Union of Teachers have challenged the unconstitutional and unlawful process leading to the administrative decision concerning:

(i) the proportional abatement of the salaries of teachers for the month of May 2016 who attended meetings convened by the Barbados Union of Teachers held on April 29<sup>th</sup> and May 4<sup>th</sup> 2016; and

(ii) the unilateral change in the terms and conditions of service of teachers in the Public Service of Barbados by the suspension, termination or discontinuation of the grant of a term's vacation leave with full pay to qualifying teachers.

In respect of the **unconstitutional and unlawful abatement of salaries**, the Claimants contend that under *Section 3.3.2* of the General Orders for the Public Service of Barbados, 1970, the Permanent Secretary had no lawful authority to exercise disciplinary control over them or to take any disciplinary action against them as public officers. They contend that the directive to abate the salaries of teachers constituted disciplinary action that could only be undertaken by the Governor-General acting on the advice of the Public Service Commission pursuant to *Section 94* of the Constitution of Barbados. Accordingly, the directive to abate salaries is substantively *ultra vires*, unconstitutional, void and of no legal effect.

The Claimants also contend that the said directive to abate teachers salaries was also procedurally *ultra vires* and in breach of the provisions for the discipline of Public Officers found in the Public Service Act, the Service Commissions (Public Service) Regulations, 1978, and the said General Orders in so far as no teacher, attending said meetings, was charged with being in breach of *Section 3.3.2* of the General Orders prior to the directive being issued by the Permanent Secretary to abate their salaries. This directive was issued therefore without affording them the opportunity of being heard to establish whether they had the permission from their substantive Head of Department to attend the meetings in question or had a satisfactory explanation for their absence from work, both of which are permissible defences to a charge under this said Section of the General Orders.

On this score, the Claimants contend that there has been a consistent and extensive and long-established practice of principals of public schools permitting teachers to attend meetings of the Union during school and that in no case, was the requested permission to attend the scheduled meetings withheld. The Claimants will also contend that the attendance at such meetings constituted a satisfactory explanation for their absence from work.

In respect of the unilateral change in the terms and conditions of service of teachers, the Claimants contend that it is provided in the said General Orders in the *Second Schedule, Section 5.1* that teachers are entitled to one (1) term's vacation leave with full pay subject to the conditions set out in the General Orders. This leave was unilaterally suspended

or terminated and no leave was granted since the academic year 2014-2015. This administrative decision was arbitrarily taken without any consultation or notice and constituted a material change in the terms and conditions of service of teachers as prescribed in the General Orders and was therefore both substantively and procedurally unlawful.

The Claimants therefore contend that these said administrative decisions have adversely affected their interests and raise matters that are justifiable in the public interest and as such, they have standing pursuant to the provisions of the Administrative Justice Act, to bring these proceedings for judicial review.

## 2 Claim No. CV.0912/2017- Mary Anne Redman et al v The Permanent Secretary, Ministry of Education

In this action, the Claimants, as members of the Barbados Secondary Teachers Union have also challenged the unconstitutional and unlawful process leading to the administrative decision to the proportional abatement of the salaries of teachers for those who attended a meeting on April 5<sup>th</sup> 2017. Their claim in this regard was espoused on a similar legal basis as that in the Pedro Shepherd matter.

In a previous conversation, you formally indicated that it is no longer the intention for the Defendant in the Mary Anne Redman matter to contest this Action for judicial review. I have also spoken to legal counsel in the Attorney-General's Chambers with a view to expediting the settlement of the Action and since then, we have both communicated the intention to settle this matter to the Court. The Action in Court has been adjourned *sine die* with the parties required to present a Draft Order to the Court with the terms of settlement.

### The Proposed Basis for Settlement

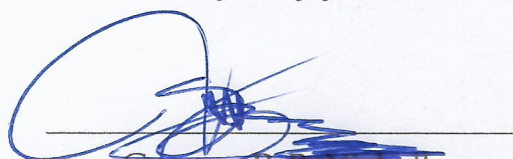
I have requested from the Claimants in both matters to provide a schedule of the damages claimed in relation to the abatement issue. Given the clear public interest element in both cases, I have advised my clients that the damages in this instance should relate to the portion of the abated salaries of all teachers in the Service who were adversely affected by this unlawful administrative decision since these Actions were intended to have representative effect for all teachers who had their salaries abated.

As it relates to the unilateral change in the terms and conditions of service of teachers in respect of the removal of the term's leave, it is my instructions to seek the immediate restoration of the term's leave with full pay consistent with the provisions prescribed in the **General Orders**. The Claimants seek no pecuniary remedy under the part of the Claim.

I am available to meet with you and your legal counsel from Chambers to expedite the resolution of both of the captioned matters. In my respectful view, there is no reason why the parties in each matter cannot come to a satisfactory agreement to settle these matters and save the time and expense of litigating these Actions for judicial review in the Court.

I look forward to hear from you soonest and thank you in advance for your prompt attention and consideration in the premises.

Very truly yours



Gregory P. B. Nicholls

- c. Mr. Sean Spencer, President, Barbados Union of Teachers  
Ms. Mary Anne Redman, Barbados Secondary Teachers Union  
The Solicitor General