

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MR JUSTICE BROWN JA
THE HON MR JUSTICE LAING JA**

SUPREME COURT CIVIL APPEAL NO COA2023CV00059

BETWEEN	MERVIN CAMERON	APPELLANT
AND	THE ATTORNEY GENERAL OF JAMAICA	RESPONDENT

Hugh Wildman instructed by Hugh Wildman and Company for the appellant

Ms Lisa White instructed by the Director of State Proceedings for the respondent

5 May and 20 June 2025

Constitutional law – Constitutional interpretation – Extension of tenure of Director of Public Prosecutions beyond usual retirement age – When agreement for extension must be made – When appointment to take effect – Whether proof of agreement for extension of retirement age – Whether purported extension null and void and of no effect – The Constitution of Jamaica, section 96(1) – Interpretation Act, sections 16 and 31(1)

F WILLIAMS JA

Introduction

[1] By this application, Mervin Cameron ('the appellant') seeks to challenge the decision of the full court, made on 31 July 2023, dismissing his fixed date claim form. By that fixed date claim form dated and filed 13 February 2023, the appellant had sought several orders in respect of the extension of tenure granted to the then and now incumbent Director of Public Prosecutions, Ms Paula Vanessa Llewellyn, CD, KC ('the DPP') in 2020. By that extension, the DPP was permitted to continue to serve in that office beyond the constitutionally specified norm of 60 years, to 63 years, ending in 2023. She

was to have attained the age of 60 years on 20 September 2020. (For completeness, she was also later allowed a further extension to 65 years, thereafter, the validity of which was recently upheld by this court - see **Attorney General (The) v Paulwell (Phillip) et al** [2024] JMCA Civ 47.)

[2] In its written decision (cited as **Cameron (Mervin) v Attorney General of Jamaica** [2023] JMFC Full 2), the Full Court made the following orders:

“[38] The declarations, being sought in Fixed Date Claim filed on 13th February, 2022 are all denied.

[39] No order as to costs.”

[3] The appellant is a murder convict serving a sentence of life imprisonment for two counts of murder with a stipulated period that he must serve before eligibility for parole. He asserts an interest in the matter by virtue of being convicted and sentenced during the tenure of the DPP, whose first extension he contends to be null and void. He also asserts his innocence of the charge and further contends that there was no evidence to ground his conviction.

[4] The following were the various heads of relief that he sought in the fixed date claim form:

- “1. A Declaration that the purported extension granted by the Prime Minister and the Governor General of Jamaica to Ms. Paula Llewellyn to remain in office as Director of Public Prosecutions beyond the age of 60 years old, such extension not being gazetted in keeping with **section 31(1)** of the **Interpretation Act**, is illegal, null and void and of no effect.
2. A Declaration that in the absence of a gazetted extension given to Ms. Paula Llewellyn to remain in the Office as Director of Public Prosecutions by the Prime Minister and the Governor General of Jamaica, renders the Office of Director of Public Prosecutions vacant.

3. A Declaration that any purported appointment given to Ms. Paula Llewellyn as Director of Public Prosecutions, after she has attained the age of 60 years old, is in breach of **section 96(1)(b)** of the **Constitution of Jamaica**, rendering such appointment illegal, null and void and of no effect.
4. A Declaration that in keeping with **section 96(1)** of the **Constitution of Jamaica**, in the absence of a valid extension granted to Ms. Paula Llewellyn as Director of Public Prosecutions, she automatically vacates office on attaining the age of 60 years old.
5. A Declaration that in the absence of any gazetted extension given to Ms. Paula Llewellyn to remain in office beyond the age of 60 years old, renders any action taken by her as Director of Public Prosecutions without being validly appointed under **section 96(1)** of the **Constitution of Jamaica**, illegal, null and void and of no effect.
6. Such further and other relief that this honourable court deems just.” (Emphases as in the original)

[5] The appellant’s fixed date claim form was supported by the “Affidavit of Mervin Cameron in Support of Fixed Date Claim Form”, sworn and filed on 13 February 2023. For the purpose of this appeal, the paragraphs that are most relevant are 6, 7 and 12. They read as follows:

“6. While serving my sentence, it has been brought to my attention, through my Attorney-at-Law, that the Director of Public Prosecutions, Ms. Paula Llewellyn, was given a second extension to remain in office, having attained the age of 60 years old which is the retirement age stipulated under **section 96(1)** of the **Constitution of Jamaica**.

7. I caused an inquiry to be made by my Attorney-at-Law, at the Jamaica Printing Service, to determine whether the extension given to Ms. Llewellyn has been gazetted in keeping with **section 31(1)** of the **Interpretation Act of Jamaica**.

12. The absence of any evidence of a gazetted extension given to Ms. Llewel[I]yn to remain as the Director of Public Prosecutions, is a clear violation of the laws and warrants the immediate intervention of the Constitutional Court to protect the integrity of the Office of Director of Public Prosecutions and the preservation of the Constitution.” (Emphases as in original)

[6] In response to the appellant’s affidavit, the respondent filed the “Affidavit of Jacqueline Mendez in Response to the Affidavit of Mervin Cameron in Support of Fixed Date Claim Form”, sworn on 23 March 2023 and filed on 24 March 2023. The most important paragraphs of that affidavit, given the issues in this appeal, are 6, 7, 8 and 9. They read as follows:

“6. In response to paragraphs 6 – 11 of the affidavit of Mervin Cameron I say that by way of letter dated January 14, 2020 the Director of Prosecutions, Ms. Paula Llewel[I]yn, CD, KC advised that as of September 2020 she would have attained the age of sixty (60) years. Pursuant to Section 96 of the Constitution the Director of Public Prosecution [sic] shall hold office until he attains the age of sixty years however the Governor General, acting on the recommendation of the Prime Minister after consultation with the leader of the Opposition, may permit a Director of Public Prosecution [sic] who has attained the age of sixty years to continue in office until he has attained such later age, not exceeding sixty-five years as may (before the Director of Public Prosecutions has attained the age of sixty years) have been agreed between them. **A copy of the letter dated January 14, 2020 is being shown to me and marked ‘JM 1’.**

7. By letter dated July 8, 2020 the Governor-General of Jamaica, Sir Patrick Linton Allen ON GCMG CD KSTJ in accordance with Section 96(1)(b) of the Constitution of Jamaica granted permission for Ms. Paula Llewel[I]yn, CD, KC, Director of Public Prosecutions to continue in office for three years and extended her appointment for the said three years. This was done acting on the recommendation of the Prime Minister in consultation with the Leader of the Opposition. The extension was granted by the Governor General before Ms Llewel[I]yn reached the age of 60 years. **A copy of the letter**

dated July 8, 2020 is being shown to me and marked 'JM 2'.

8. The extension was subsequently published by way of Gazette for public information. It was published on August 26, 2020 prior to the 60th birthday of Ms. Paula Llewellyn. **Copies of the Gazette Notice and Gazette dated Wednesday August 26, 2020 are being shown to me and marked 'JM 3'.**

9. In response to paragraphs 12 – 15 of the affidavit of Mervin Cameron I say that I am advised by my Attorneys-at-Law and do verily believe that the extension of the office of the Director of Public Prosecutions was lawfully granted in accordance with Section 96(1)(b) of the Constitution of Jamaica. There was no violation of the law on the part of the [C]rown in this matter.” (Emphases as in original)

[7] Three documents exhibited to this affidavit and mentioned in the foregoing paragraphs are also of importance to a consideration of the issues in this appeal. They are: (i) a letter from the DPP to the Chairman of the Public Service Commission dated 14 January 2020 ('JM 1'); (ii) a Gazette notice dated 28 July 2020; and (iii) a copy of the Jamaica Gazette Extraordinary dated 26 August 2020 (the latter two forming 'JM 3').

[8] It is useful to set out portions of the contents of these documents.

The documents exhibited

The letter seeking the extension of tenure

[9] The letter seeking the extension refers to the impending date of retirement, the successful prosecution of cases of national significance, renovations being done and transformational developments that were being undertaken which would continue beyond the age at which the DPP would normally have retired. After the outlining of those matters, these are the more relevant parts of the letter:

“After mature discussions with some of my most senior members of staff and the Human Resource Director, it would seem that the best interest of the Office in the near future

would not be well served by me demitting office in September 2020.

To that end, I use this correspondence to indicate that if the Honourable Prime Minister in consultation with the Leader of Opposition would be minded to recommend to the Governor General the continuation of my tenure as Director of Public Prosecutions (as allowed by the Constitution) at this time I would have no objection in continuing to make a contribution at this high level of the administration of justice on mutually agreed terms.

I hereby seek your intervention and extension of professional courtesies to convey this letter through the relevant channels given the usual protocols which obtain in matters of this nature.”

The Gazette Notice

[10] The following are the terms of the Gazette Notice:

“The Governor-General, acting on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition, has approved that the appointment of **Miss Paula Llewellyn, QC**, Director of Public Prosecutions in the Office of the Director of Public Prosecutions, be extended for three (3) years, with effect from the 21st September, 2020, in accordance with Section 96(1)(b) of the Constitution of Jamaica.”

The Jamaica Gazette Extraordinary

[11] The other document exhibited as ‘JM 3’ is the Jamaica Gazette Extraordinary. It reads as follows:

“The following Notification is, by command of His Excellency the Governor-General, published for general information.

GOVERNMENT NOTICE

APPOINTMENT

No. 208

The Governor-General, acting on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition, has approved that the appointment of Miss Paula Llewellyn, QC, Director of Public Prosecutions in the Office of the Director of Public Prosecutions, be extended for three (3) years, with effect from the 21st September, 2020, in accordance with section 96(1)(b) of the Constitution of Jamaica.

No. O.S.C. C.6236”

The appellant’s response

[12] In response to Ms Mendez’s affidavit the appellant swore to and filed the “Further Affidavit of Mervin Cameron in Support of Fixed Date Claim Form”, on 12 April 2023. Paragraphs 6, 7 and 8 of that affidavit are relevant and are set out hereunder:

“6. The [C]onstitution of Jamaica and in particular **section 9(1)(b)** [sic] clearly stipulates that any extension given to the holder of the office of DPP must be done before the person attains the age of 60. In the present case Ms Llewellyn’s extension took effect on her birthday when she had already attained the age of 60 which is a clear violation of the Jamaican [C]onstitution.

7. **Section 31(1) of the Interpretation Act** stipulates that the gazette takes effect on publication unless otherwise stated. In this case it is otherwise stated and that it takes effect on 21st of September 2020, which is the day of her birthday which is a breach of **section 96(1)(b) of the Constitution of Jamaica**.

8. It is a fact that the Gazette and the note issued by the Governor General do not avail the Defendant. The Claimant asserts that from their Affidavit it firmly establishes the purported extension granted to Ms. Llewellyn on the 31st [sic] of September 2020 is a clear violation of **section 96 of the Constitution of Jamaica**, rendering such extension illegal, null and void and of not [sic] effect.”

[13] It will be readily apparent that the appellant changed his position from what he complained about in his first affidavit to what he deposed in his further affidavit. Whilst in the first affidavit and in his fixed date claim form he sought to challenge the extension

on the basis that it had not been gazetted as required by law, in the further affidavit, the gazette having been produced by the respondent, his main contention was that the extension ought to have been granted before the DPP had reached age 60, and not on or after her 60th birthday, as was done.

The grounds of appeal

[14] Being dissatisfied with the Full Court's dismissal of his claim, the appellant appealed to this court. The grounds of appeal, contained in his notice and grounds of appeal filed on 4 August 2023, are as follows:

"a) The full court erred in law when it stated in paragraph (32) of its judgment that under Section 96(1)(b) of the Constitution - the DPP could be granted an extension of office after she has attained the age of 60 years old.

b) The full court erred in law when it failed to appreciate that under Section 96(1) of the Constitution the DPP must demit office having attained the age of 60 years old.

c) The full court erred in law in failing to appreciate that under Section 96(1)(b) of the Constitution any extension granted to the DPP must be done before the DPP attains the age of 60.

d) The full court erred in law in failing to appreciate that under Section 96(1)(b) of the Constitution before the DPP can continue in the office having attained the age of 60 she must have in her possession an instrument of appointment by His Excellency the Governor General granting an extension before she has attained the age of 60 years old.

e) The full court erred in law in failing to appreciate that under Section 16 of the Interpretation Act, any extension granted to the DPP must take effect at least one (1) clear day prior to the DPP attaining the age of 60 years old.

f) The full court erred in law in failing to appreciate the legal effect of the gazette that was published on the 26th day of August 2020 purporting to extend the tenure of the DPP beyond the age of 60 years old to take effect on her 60th birthday.

g) The full court erred in law in failing to appreciate that the effect of the gazette published on the 26th day of August 2020 to take effect on her birthday on the 21st of September 2020 renders such appointment illegal, null and void and of no effect.

h) The full court erred in law in failing to appreciate that on the state of the evidence before it there was no evidence to indicate that the Prime Minister had made any recommendation to the Governor General for Ms. Llewel[I]yn to remain in office beyond the age of 60 years old pursuant to Section 96(1)(b) of the Constitution.

i) The full court erred in law in failing to appreciate that the reference by His Excellency the Governor General to a purported letter written by the Prime Minister to His Excellency the Governor General amounts to an implied assertion and is caught by the rule against hearsay, and could not form the basis of a recommendation from the Prime Minister to His Excellency the Governor General for Ms Llewel[I]yn to remain in office beyond the age of 60 years old pursuant to Section 96(1)(b) of the Constitution.

j) The full court erred in law in failing to appreciate that the letter purportedly written by Ms Llewel[I]yn to the Public Service Commission in January 2020 could not form the basis as a request for an extension of office by Ms. Llewel[I]yn as the said letter was not written to any of the persons who could lawfully grant an extension to Ms Llewel[I]yn pursuant to Section 96(1)(b) of the Constitution.”

Section 96(1) of the Constitution

[15] As the issues in this case centre on the interpretation to be placed on section 96(1) of the Constitution, that section will be set out in full. It reads thus:

“96(1) Subject to the provisions of subsections (4) to (7) (inclusive) of this section the Director of Public Prosecutions shall hold office until he attains the age of sixty years:

Provided that—

(a) he may at any time resign his office; and

(b) the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Director of Public Prosecutions who has attained the age of sixty years to continue in office until he has attained such later age, not exceeding sixty-five years, as may (before the Director of Public Prosecutions has attained the age of sixty years) have been agreed between them.

(2) Nothing done by the Director of Public Prosecutions shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.”

[16] Subsections (4) to (7) relate to the removal of the DPP and are not relevant to this discussion.

The submissions

For the appellant

[17] A perusal of the grounds of appeal makes it clear that, their numbers notwithstanding, they cover two central points, and it was on these two points that Mr Wildman focused in submitting on behalf of the appellant. One was as to when the agreement and extension are properly to take effect. The other was an evidential issue regarding the letter from His Excellency on the ground that it amounted to inadmissible hearsay and that, as a result, there was no proof of agreement for the extension.

[18] In his written submissions, Mr Wildman contended that the appointment that was granted to the DPP to remain in office beyond age 60 years constituted a breach of the Constitution. Counsel referred to section 96(1) of the Constitution and argued that, based on the provisions of the section, where the DPP seeks to continue in office beyond age 60 there must be an agreement between the DPP and the Governor-General upon the recommendation of the Prime Minister, after consultation with the Leader of the Opposition.

[19] Counsel also contended that, where there is to be an extension, the appointment must be gazetted and, in his submission, the affidavit of Ms Mendez made it clear that

the provision of section 96(1) was not followed. To support this submission, Mr Wildman argued that the letter written by the DPP was not enough to provide the basis for an extension of her tenure in office. He argued that the letter was not directed to the relevant parties referred to in section 96(1), as, he argued, was required.

[20] In his written submissions, Mr Wildman argued that, although the gazette was published in August 2020, it did not take effect until the DPP's birthday which was 21 September 2020. In counsel's submission, the date of the gazette made it clear that the proper process was not followed. He contended that, notwithstanding when the gazette was published, the fact that the extension took effect on the DPP's birthday breached the constitutional requirement, as the relevant section required that the extension be granted before the DPP's birthday.

[21] Mr Wildman referred to section 31(1) of the Interpretation Act ('the Act') and the cases of **National Housing Trust v Treebros Holdings Limited** [2018] JMCA App 21, and **Joachim & Anor v The Attorney General & Anor** [2006] UKPC 6, to emphasise the importance of gazetting in relation to appointments and other acts. He also emphasised that, if an appointment is not gazetted in keeping with the law, it has no legal effect. Counsel submitted that the Full Court fell into error because it failed to recognise that, even if the agreement was made before the DPP's 60th birthday, the appointment must also take effect before her 60th birthday rather than after. He referred to section 96(1)(b) of the Constitution and contended that any appointment after 60 years is invalid.

[22] Counsel also argued that the Full Court relied on inadmissible hearsay evidence when it relied on the letter from the Governor-General, that made reference to the letter from the Prime Minister which purported to recommend the grant of the extension of the DPP's tenure. He submitted that, for this to be accepted, the Prime Minister would have had to provide an affidavit establishing that fact. Mr Wildman argued that the Full Court acknowledged the absence of any such letter from the Prime Minister, yet it made findings on inadmissible hearsay evidence by concluding wrongly that there was indeed a

recommendation from the Prime Minister to the Governor-General for the grant of the extension to the DPP.

[23] Mr Wildman contended that sections 16 and 31(1) of the Act are to be read together in order to understand when the extension should properly have taken effect. He also submitted that the gazette stated that the extension would have taken effect on 21 September 2020. However, the aforementioned sections of the Act provide for the extension taking place at the end of the day preceding 21 September which would be midnight on the 20 September which, in counsel's submission, would be the beginning of 21 September. Counsel contended that this is a breach of section 96(1) and 96(1)(b) because the appointment must take place before the DPP attained 60 years of age.

[24] In both his written and oral submissions, counsel's main argument was that the DPP's extension was invalid as it was granted after she attained the age of 60 years. It was on this basis that counsel submitted that the appeal should be allowed, and the Full Court's decision be set aside because the DPP's tenure came to an end on 21 September 2020.

For the respondent

[25] Ms White, in her written and oral submissions, contended that the appeal is without merit and should be dismissed, on the basis that the Full Court made the correct findings of law and fact. She referred to section 96(1)(b) of the Constitution and argued that there was no ambiguity in the provision and so it should be given its ordinary meaning. Ms White argued that, on its plain meaning, the section required that the agreement for the extension must take place before the DPP attains 60 years of age. However, the actual extension would not take effect until after the DPP's existing tenure at the time would have ended, that is, at age 60 years.

[26] Counsel also referred to the affidavit of Jacqueline Mendez to submit that it proved the lawfulness of the DPP's extension of tenure which took effect on her 60th birthday. She referred to the DPP's letter dated 14 January 2020, which was addressed to the

Public Service Commission, wherein the DPP advised that she would attain 60 years of age in September of that same year and requested the extension. Ms White also referred to the Governor-General's letter dated 8 July 2020, wherein he referred to a letter that he had received from the Prime Minister on 7 July 2020 advising him that, after consultation between the Prime Minister and the Leader of the Opposition, he agreed to the extension of the DPP's tenure for three years. In relation to the Governor-General's letter dated 8 July 2020 (which, she argued, was not hearsay) counsel also submitted that the Governor-General acted in accordance with section 96(1)(b) of the Constitution when he replied to the Prime Minister and granted permission for the DPP to continue in office for three years. This extension was later published via the gazette on 26 August 2020 which was prior to the DPP's 60th birthday.

[27] In her oral submissions, counsel argued that, in his pleadings, the appellant did not challenge whether there was a consultation between the Prime Minister and the Leader of the Opposition; neither did the appellant challenge whether the Prime Minister wrote to the Governor-General. She argued that, if the appellant was pursuing these matters, then they should have been pleaded in his statement of case, because he who alleges must prove. In response to Mr Wildman's argument concerning the importance of the gazette, Ms White submitted that the Full Court appreciated the importance of the gazette and did not fall into error in arriving at its decision.

[28] Ms White also addressed Mr Wildman's reliance on section 16 of the Act and submitted that it was not applicable. To support her argument, she quoted paras. [30] to [33] of the written judgment of the Full Court. She contended that section 16 of the Act had no bearing on the requirement that the agreement must have taken place before the DPP attained 60 years of age.

[29] Counsel submitted that the Full Court did not err when it accepted the Governor-General's letter as evidence that the extension was granted in accordance with section 96(1)(b). In her written submissions, she quoted section 96(2) of the Constitution and contended that, even if the process did not strictly comply with the provision of section

96(1)(b), in the granting of the DPP's extension, the actions of the DPP still would not have been invalidated only by virtue of the fact that she had attained the age of 60 years.

[30] Counsel cited the case of **Paul Chen Young et al v Eagle Merchant Bank of Jamaica Limited** [2018] JMCA App 7 ('**Chen Young**') in her written submissions to illustrate her contention that it was distinguishable from the instant appeal. She submitted that, in **Chen Young**, the applicants sought and were granted a declaration that the impugned judgment was null and void because the judges were retired and had not received permission from the Governor-General to continue in office beyond retirement. She sought to distinguish **Chen Young** from the instant appeal by submitting that, in this case, the Governor-General had validly granted permission for the extension of the DPP's tenure in office. Therefore, in the circumstances, the acts of the DPP during her extension cannot be impugned. Ms White concluded her arguments by submitting that this court ought to dismiss the appeal with costs to the respondent.

Discussion

The principles of constitutional/statutory interpretation

[31] In the case of **The Minister for Home Affairs and the Minister of Education v Collins MacDonald Fisher and Eunice Carmeta Fisher** (Bermuda) [1979] UKPC 21 (14 May 1979), Lord Wilberforce, writing on behalf of the Board, in choosing between two proposed options for interpreting a constitutional provision, opined at page 5 of the report that the preferred approach was:

"...to treat a constitutional instrument such as this as *sui generis*, calling for principles of interpretation of its own, suitable to its character ... without necessary acceptance of all the presumptions that are relevant to legislation of private law."

[32] On the same page, he also observed that:

"A Constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been

used and to the traditions and usages which have given meaning to that language.”

[33] The learned authors of *Fundamentals of Caribbean Constitutional Law* (Tracy Robinson, Arif Bulkan and Adrian Saunders), in dealing with approaches to constitutional interpretation, opined as follows at para. 3-001:

“The interpretation of Caribbean constitutions is ‘a legal activity in its own right’, as noted by Wit J. Courts use several methods in interpreting Caribbean constitutions. The weight given to these different modes and sources of interpretation and the resolution of tensions between them is far from set, and differs from case to case. Arguably, the most dominant approach to constitution interpretation in the Caribbean has textualism – a close read of the words used in the text – as its base. Judges in Caribbean cases emphasise the need to look closely at the actual words used in constitutional texts in their context and surrounding circumstances.”

[34] In the case of **Commissioner of Prisons and another v Seepersad and another (Trinidad and Tobago)** [2021] UKPC 13, at para. 26, Sir Bernard McCloskey, writing on behalf of the Board, also gave the following guidance on how a court should approach the task of constitutional interpretation. He said:

“Constitutions are living instruments. They are to be construed by reference to the situation of and conditions prevailing in the society which they serve as these evolve from time to time. It is for this reason that the approach of the interpreting court should ordinarily be more liberal than it would be in construing, for example, a measure of legislation or legal instruments such as deeds and contracts. In short, the court is enjoined to adopt a broader perspective.”

[35] Although a constitution is a foundational document, against which the legality of statutory instruments often falls to be measured, quite often (and, in particular, where there is no clash between it and a statute or questions as to a statute’s constitutionality), a constitution can be interpreted in much the same way as a statute, using the same basic rules. This is in keeping with the approach of textualism discussed in *Fundamentals of Caribbean Constitutional Law*.

[36] Lord Reid, in the House of Lords case of **Pinner v Everett** [1969] 3 All E R 257, at 258-259, in giving guidance on the manner in which statutes ought to be interpreted, opined as follows:

“In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase.”

[37] In Cross on Statutory Interpretation, third edition, at page 49, the learned editors set out a summary of the basic rules of interpretation in this way:

“1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.

2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.

3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute.

4. In applying the above rules the judge may resort to the aids to construction and presumptions...”

[38] Bearing in mind all this guidance and adopting as a point of departure the just-quoted summary of basic rules in Cross on Statutory Interpretation, it appears that it is only the first two of these basic rules (perhaps even only the first) that are necessary to be considered when seeking to interpret section 96(1)(b) of the Constitution. Having

perused the section, I entertain no doubt that a careful reading of its plain words supports the respondent's contention that: (i) an agreement that a DPP's tenure is to be extended beyond the normal retirement age is required to be reached before the DPP attains the age of 60; and (ii) the extension would come at the end of the DPP's normal tenure at age 60. I am of the view that these are the main elements of section 96(1)(b):

- (i) the normal tenure of a DPP is to age 60;
- (ii) the DPP may resign at any time.
- (iii) Should the Prime Minister and/or the DPP wish the DPP's tenure to be extended beyond age 60, an agreement to that effect has to be struck before the age of 60 is attained; and
- (iv) That extension will take effect on the DPP's attainment of the age of 60 years, and not before.

[39] In the writing of this section and in its inclusion in the Constitution, the framers of the Constitution no doubt had in mind a scheme that would be conducive to good administration and a smooth and seamless transition when the age for retirement of a DPP approached. If, for some reason, it was desired to have the DPP continue in office after the normal retirement age, an agreement to that effect could be struck. If not, someone would succeed the DPP in his or her office once he or she reached age 60.

[40] In relation to the appellant's contention that the grant of the extension must precede the attainment of the retirement age of 60, I find that position to be untenable. In the first place, the Concise Oxford Dictionary, 10th edition, defines "extension" as: "an additional period of time given to someone to hold office or fulfil an obligation". On this simple dictionary definition, therefore, an extension is something that is added to what has normally come to an end. Support for this is to be found in Stroud's Judicial Dictionary, fifth edition, Volume 2: D-J, in which "extension" is defined as: "a term properly used for the purpose of enlarging, or giving further duration to, any existing right...". Additionally, this interpretation is reinforced by the use of the words "has attained the age of sixty years" in the section as the point from which permission may be

granted for the DPP to continue in office for a further period. I agree with the respondent's submission that to accept the meaning contended for by the appellant would result in an absurdity and make worthless the use of the just-quoted phrase, using the words "has attained".

[41] With regard to the appellant's challenge to the Governor-General's letter as being hearsay and so inadmissible, and as an absence of proof of any agreement for the extension, it is important to refer to exactly what the full court said in dealing with the issue of the letter and proof of the agreement. This may be seen at paras. [28] and [32] of the Full Court's judgment, as follows:

"[28] Section 96(1) of the Constitution dictates that the DPP can continue in office after she attains the age of sixty years, however the agreement for the extension must have been arrived at before she attained the age of sixty. The submissions of Counsel for the Claimant seemed to have been focused on when the extension would have taken effect as opposed to the occasion the extension was agreed upon. There was clearly an agreement for the DPP to be granted an extension prior to the 21st of September 2020. The letter from the Governor General to the Prime Minister dated the 8th of July 2020 speaks to a letter he received from the Prime Minister where he, the Prime Minister, had recommended the extension of the tenure of the DPP for three years. That letter was never produced to the Court, but upon a reading of the letter of 8th July 2020 it was garnered that there was consultation with the Leader of Opposition. That letter then led to the publication of the extension in the Extraordinary Gazette. The Constitution speaks only to the agreement being concluded before the sixtieth birthday of the DPP. There was clearly an agreement in place before that day, I therefore find no merit in the submissions of Mr Wildman.

...

[32] I find that the fact that the extension would have taken effect on either the day of the DPP's birthday or the day after her birthday is of no moment. This is so for two reasons. Firstly, the extension could not have taken effect until the end of the DPP's tenure. Secondly Section 96(1) (b) of the

Constitution allows for the extension to be granted after the DPP has attained the age of sixty, however, the agreement must have been arrived at before she turned sixty. As previously stated in the judgment, I find that the agreement to extend the tenure of the DPP had been concluded before the DPP attained the age of sixty. That agreement was evidenced by the Extraordinary Gazette of the 26th of August 2020." (Emphasis added)

[42] On my reading of the judgment in its entirety and, in particular, of these two paragraphs, it appears to me that it was on the gazette that the Full Court based its finding of the existence of an agreement and not so much (if at all) on the impugned letter. In my view the gazette (possibly along with the gazette notice) was sufficient as a basis for such a finding. There was no challenge mounted to the gazette itself or to the gazette notice. It is useful to refer to section 5 of the Jamaica Gazette Act at this juncture. It reads as follows:

"5. A document purporting to be the Jamaica *Gazette*, and to contain a notification of any proclamation, act, or notice made, done, or given by the Queen, her heirs or successors, or to contain a notification of any appointment by the Queen, her heirs or successors, or by the Governor-General or by a Minister, of any person to any office in Jamaica, or to contain a notification of any act, order, commission, direction, resolution, notice, by-law, ordinance, rule or regulation done, made, issued, given, sanctioned, confirmed, approved, or allowed by a Chamber or House of the Legislature, or both, or by any executive authority of Government under any Statute or Law passed or to be passed, or to contain a notice of any kind required to be inserted in the Jamaica *Gazette* by any Statute or Law passed or to be passed, shall be *prima facie* evidence in all Courts and in all legal proceedings of the fact that such proclamation, act, or notice was made, done, or given, or that such appointment was made, or that such act, order, commission, direction, resolution, notice, by-law, ordinance, rule, or regulation, was done, made, issued, given, sanctioned, confirmed, approved, or allowed or that such notice so required to be inserted in the Jamaica *Gazette* was

given by the persons, at the time, in the manner and terms, and to the extent stated or appearing in such document, and that all such matters as stated or appearing in such document were duly published in the *Jamaica Gazette*. This section shall apply to documents purporting to be the *Jamaica Gazette* whether published before or after the twentieth day of March, 1873.” (Emphasis added)

[43] The gazette being *prima facie* evidence of the agreement and appointment, and there having been no challenge to it, it provides reinforcement for the conclusion that the Full Court was correct in accepting it as proof of the agreement.

The role of the Governor-General

[44] Although it may appear somewhat trite, it may assist the discussion to refer briefly to the office of the Governor-General, its establishment and functions.

[45] The high office of Governor-General is a very important one in relation to the exercise of the executive authority of Jamaica. It is created by section 27 of the Constitution, which reads as follows:

“27. There shall be a Governor-General of Jamaica who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Jamaica.”

[46] Section 32(5) relates to the procedure followed where the Governor-General is required to act on the recommendation of the Prime Minister and sets out the various steps in that procedure. This is how it is worded:

“(5) Where the Governor-General is directed to exercise any function on the recommendation of the Prime Minister after consultation with the Leader of the Opposition the following steps shall be taken: -

(a) the Prime Minister shall first consult the Leader of the Opposition and thereafter tender his recommendation to the Governor-General;

(b) the Governor-General shall then inform the Leader of the Opposition of this recommendation and if the Leader of the Opposition concurs therein the Governor-General shall act in accordance with such recommendation;

(c) if the Leader of the Opposition does not concur in the recommendation the Governor-General shall so inform the Prime Minister and refer the recommendation back to him;

(d) the Prime Minister shall then advise the Governor-General and the Governor-General shall act in accordance with that advice.”

[47] In his book, *The Constitutional Law of Jamaica*, the Hon Dr Lloyd Barnett, at page 175, makes this observation about this provision:

“The functions which are exercisable in accordance with this procedure comprise the appointment of the Chief Justice, the President of the Court of Appeal, and the members of the Services Commissions; and the extension beyond the normal retirement age of the period of service of the Judges and Director of Public Prosecutions. The procedure was designed to ensure that in making these very special appointments the Prime Minister ‘should not act without due regard to propriety’.” (Referring to the Report of the Committee of the Legislature on the Proposals for a Constitution to take effect on Independence (The Constitution Report))

[48] The procedure involving the Governor-General that was employed in this case, therefore, is one that is standard and used fairly often – especially with regard to the appointment of members of the several services commissions on the resignation of its members, the expiration of their terms or the appointment of new commissions on a change of government. Against the background of these constitutional provisions and the factual background to this appeal (including the unchallenged existence of the gazette notice and the Jamaica Gazette itself), the appellant’s challenge to the Governor-General’s letter is somewhat perplexing. For one, it could very well be regarded as being in the nature of a collateral attack on the question of whether the Governor-General has properly performed his function pursuant to section 96(1). If so, that would be in breach of section 32(4) of the Constitution, which reads as follows:

“(4) Where the Governor-General is directed to exercise any function in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, or on the representation of, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.”

[49] Whilst I acknowledge the appellant’s right to seek to exploit any substantive, evidential or other chink in the armour of his opponent’s case that he may see fit, in this appeal, where he is not challenging the gazette notice and the gazette themselves, his attack on the Governor-General’s letter seems (with every respect to him) to be a pointless technical objection that was taken just because it could be. If the required procedure was not followed, then it would mean that someone in the Governor-General’s office erroneously caused the gazette notice and gazette to be issued and published. However, it is noteworthy that between the publication of the Gazette on 26 August 2020 and the hearing of the application in the full court in July of 2023 (a period of some three years), no demur was heard coming from any of the parties involved in the process. In our view, to further explore the evidential point relating to the letter would be an unnecessary excursion. I find this point made by the appellant to be wholly unmeritorious.

[50] The disposal of these two main points is, in my view, enough to dispose of the appeal in favour of the respondent. However, two other points arose, which, since they were mentioned, I will briefly discuss.

The addressee of the DPP’s letter

[51] One of these points pertained to the person to whom the DPP’s letter was addressed, the appellant arguing that it ought to have been addressed to one of the parties mentioned in section 96(1). In my finding, there is nothing to support that argument. A perusal of the section shows that there is no directive or guidance given therein on the question of to whom a letter of that nature ought to be addressed. In my view, no sustainable objection can be taken to the DPP’s routing the letter through the Public Service Commission, seeking its assistance in conveying the letter, as the DPP requested, “through the relevant channels given the usual protocols which obtain in

matters of this nature". It may assist to refer very briefly to another constitutional provision – section 94(1). It reads as follows:

"94. --(1) There shall be a Director of Public Prosecutions, whose office shall be a public office."

[52] In the absence of guidance or a clear directive in the relevant section, there could be no reasonable objection taken to the routing of the letter through the Public Service Commission, the DPP being, after all, a public officer, appointed by the Governor-General upon the advice of the Public Service Commission (see, for example, sections 125(1) and 96(3) of the Constitution).

The Interpretation Act

[53] The other point relates to the Interpretation Act. The appellant referred to sections 16 and 31(1) of that Act. Section 16 reads as follows:

"16. Where any Act, or part of an Act, or any regulations made thereunder came or comes into operation on a particular day, it shall be deemed to have come or shall come into operation immediately on the expiration of the day next preceding such day."

[54] If I understand the appellant's submission in relation to the appointment, it is that, to be valid, the appointment must be effective before the DPP's 60th birthday. Section 16, the appellant is saying, stipulates when the notice in the gazette (along with the appointment) takes effect. He is, therefore, saying that the appointment took effect "on the expiration of the day next preceding" the date of publication. If this is so, then, is the appellant not, in effect, saying that the appointment is in fact valid? It appears to me that that would be the logical conclusion of his argument.

[55] In relation to section 31(1) of the Interpretation Act, it reads thus:

"31. (1) All regulations made under any Act or other lawful authority and having legislative effect shall be published in the *Gazette* and unless it be otherwise provided shall take effect

and come into operation as law on the date of such publication.” (Emphasis added)

[56] The appellant’s contention is that “[b]oth the agreement and the appointment had to be struck before she attains her sixtieth birthday”. However, the underlined words of the section permit a departure from the general rule of the effective date being the date of publication and the gazette clearly stated when the appointment was to have taken effect. In these circumstances, the appellant clearly has not made out a case on this point.

Conclusion

[57] Having given careful consideration to the submissions in this appeal, I find that the appellant has failed to make good any of the grounds advanced. In the result, the appeal must be dismissed. Additionally, as the grounds were all lacking in merit, I see no reason to depart from the general rule that costs follow the event. I would, therefore, order as follows:

(i) The appeal is dismissed.

(ii) Costs of the appeal to the respondent, to be agreed or taxed.

BROWN JA

[58] I have read, in draft, the judgment of F Williams JA. I agree with his reasoning and conclusion and have nothing to add.

LAING JA

[59] I too have read the draft judgment of F Williams JA and agree with his reasoning and conclusion.

F WILLIAMS JA

ORDER

(i) The appeal is dismissed.

(ii) Costs of the appeal to the respondent, to be agreed or taxed.