



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2022: No. 50

**IN THE MATTER OF S. 8, 9 & 15 of the Bermuda Constitution 1968
IN THE MATTER OF S. 20(1)(B), 21 & 94 of the Trade Union and Labour Relations
(Consolidation) Act 2021
IN THE MATTER OF the Good Governance Act 2012**

BETWEEN:

REV. DR. LEONARD SANTUCCI

Plaintiff

- and -

THE BERMUDA UNION OF TEACHERS

Defendant

JUDGMENT

Suspension of union membership, Breach of confidence, Freedom of conscience, Freedom of expression, Rules of natural justice, Ineligibility of candidacy for election, Reversal of election results, Defamation, Audited accounts,

Date of Hearing: 16, 17 April, 6, 7 June 2024

Date of Judgment: 14 April 2025

Appearances:

Vaughan Caines, Forensica Legal, for Plaintiff

**Kyle Masters, Mahogany Bean, Carey Olsen Bermuda Limited,
for Defendant**

JUDGMENT of Mussenden CJ

Introduction

1. The Bermuda Union of Teachers (the “**Union**”) website¹ informs that the organization was formed in 1919. Its initial support was from approximately a third of the island’s Black teachers. They managed, notwithstanding their travails, to maintain an image of strength by providing the cohesiveness that helped bring about collective efforts such as interschool sports, joint concerts and interschool elocution contests. In 1947 the Union became the first registered trade union in Bermuda’s history. It would not be long after when in 1948 the all-white Teachers Association of Bermuda also became a registered trade union. Even though racially divided as unions, they began to work together with shared aims and objectives. They soon learned that their unity was strength and as a joint negotiating team they represented nearly all the teachers on the island. When the walls of segregation began to fall, in 1964 the two unions came together to become the “Amalgamated Bermuda Union of Teachers”, the name being changed to the “Bermuda Union of Teachers” in 1997.
2. Any perusal of trade unionism information will show that the principles of unity and solidarity among members are a foundation of trade unions universally. Usually, union unity and solidarity gets tested by entities across the bargaining table. Sometimes, they get tested from within. This is such a case.
3. The Plaintiff, Rev. Dr. Santucci (“**Dr. Santucci**”), was at all material times, (i) employed as a teacher at the Berkeley Institute (“**the Berkeley**”); and (ii) a member of the Union. He

¹ From the website of the Bermuda Union of Teachers - Khalid Wasi and Carolyn Davis November 2004, Edited by Handsome R. Williams (BUT 2019); the Bermuda Education Journal Volume 1 – ABUT Handbook 198/91

was also the union representative for the teachers at the Berkeley who were members of the Union (the “**Berkeley Members**”).

4. The Union’s motto is “*Education for Responsibility*”. It is governed by its constitution (the “**Union Constitution**”). Article II² of the Union Constitution sets out thirteen (13) objectives which include:

- “1) To promote and advance the cause of education in Bermuda;*
- 2) To promote a high standard of professional ethics and a high standard of professional competence;*
- 5) To promote its members, both individually and collectively, in their profession, and to ensure that none of the civil, human and legal rights enjoyed by other Bermudian residents shall be denied its members.*
- 13) To comply with the current Trade Union Act, 1965 and the Labour Relations Act, 1975.”*

Background and Pleadings

Generally Endorsed Writ of Summons and the Statement of Claim (the “**SOC**”)

By a Generally Endorsed Writ (the “**Writ**”) issued on 1 March 2022, subsequently amended on 31 March 2022 and the Statement of Claim (“**SOC**”) dated 10 May 2022, Dr. Santucci commenced the present action.

5. The SOC set out the particulars of the claims:
- a. On or about 22 June 2021, the union representatives of the Union member schools held an in-person regular meeting in respect of their duties. On or about 22 June 2021, the Union issued a communique (the “**June Communique**”) which highlighted sweeping changes in two categories which were not authorized by the Supreme Authority of the Union, that is, the Biennial General Conference (the “**BGC**”), but by the Executive Committee (the “**ExCo**”) on the subject of: (i)

² Any reference to an “Article” is a reference to an Article of the Union Constitution

completed works; and (ii) the office structure, including changes to the holder of the role of the General Secretary of the Union (the “**GS**”), (together the “**Issues**”).

- b. On or about 1 July 2021, Dr. Santucci, on behalf of Union members at the Berkeley, in a letter (the “**July Letter**”), sought clarity from the Union about the Issues. He shared the July Letter with the Berkeley Members. He received a reply from the President of the Union via telephone informing that the ExCo run the Union as they see fit.
- c. On or about 11 August 2021, an article appeared in the Bermuda daily newspaper, the Royal Gazette (the “**RG**”) informing that the long-standing GS had stepped down, including a comment from that person that he had been asked to quit his post and consequently left the post.
- d. On or about 8 September 2021, Dr. Santucci submitted a letter, on behalf of 46 Berkeley Members, who had signed it, to the ExCo seeking a Special General Membership Meeting (“**SGMM**”) in accordance with Article VI(6) – Organization of the Union - General Membership Meetings (the “**Meeting Request**”). The letter set out that the issues to be raised included the status of Annual Financial Audits for the years 2017 – 2020 and the duty of officers of trade unions to render accounts. On or about 1 September 2021, the GS acknowledged receipt of the Meeting Request stating that the SGMM could not be held due to the Covid-19 pandemic. At the GS’s request, Dr. Santucci shared the GS’s letter with the Berkeley Members who had signed his letter.
- e. On or about 29 September 2021, Dr. Santucci received correspondence from the GS informing him that due to the Covid-19 pandemic the proposed SGMM could not be held. At or around the same time, Dr. Santucci submitted his nomination form for the position of Vice President and Counsellor Representative (the “**Nomination**”) which was acknowledged on or around 10 October 2021 by the GS.
- f. On or around 30 September 2021, via a Whatsapp message, Dr. Santucci was informed of an Emergency Representative Meeting by Zoom (the “**ERM**”) which he attended, not being informed of the agenda. He attended the meeting when he asserts that he was verbally attacked in relation to the Union being contacted by an

RG reporter regarding a pending story in its 4 October 2021 edition about ExCo decisions. The President informed the meeting that comprised of union representatives, the ExCo, ExCo Officers and Trustees, a meeting composition which Dr. Santucci contended he had never participated in previously. Dr. Santucci concluded that the meeting was about the June Communique and the documents for the Meeting Request, which were read to the meeting. No reference was made to the July Letter which it is asserted distorted the frame of reference of the meeting. Dr. Santucci asserts he answered a number of questions that were put to him when he defended his rights to challenge decisions of the ExCo. He explained the content of the July Letter, leaving the meeting early to attend to a family matter.

- g. On or around 4 October 2021, the ExCo released a communique (the “**October Communique**”) initially praising Dr. Santucci’s handling of the Meeting Request but then chastised him for speaking with the media after the ERM, labelling his actions as “*nothing short of treasonous*”.
 - h. On or around 12 October 2021 an article appeared in the RG in which Dr. Santucci complained that he was accused of treason. On or about 14 October 2021, Dr. Santucci received a letter from the GS: (i) informing him that the ExCo had suspended his membership (the “**Interim Suspension**”) and recommended him for expulsion from Union membership at the next General Membership Meeting; and (ii) making reference to the media, the ERM and the June and October Communiques. There was no mention to the Union membership of the steps taken by Dr. Santucci to address the Issues and no mention of how and if the ExCo had resolved the Issues.
 - i. On or about 15 October 2021, an article appeared in the RG which labelled Dr. Santucci as a whistleblower and informed of his Interim Suspension.
 - j. I should add here that on 4 November 2021 at a SGMM, Dr. Santucci’s final suspension was moved and seconded by the General Membership of the Union (the “**Final Suspension**”, defined together with the Interim Suspension as the “**Suspensions**”).
6. The SOC also set out the particulars of abuses and usurpation of Dr. Santucci’s rights:

- a. That Dr. Santucci was never informed of a hearing date in accordance with the Union Collective Bargaining Agreement practice of Grievance Procedure (Schedule 4) as well as Discipline Procedure (Schedule 5). He asserted that he was denied by the ExCo to the rights of a hearing and representation, such actions which breach the Union objectives espoused in Article II paragraphs 2, 5 & 13.
- b. That the Suspensions by the Union resulted from Dr. Santucci addressing the Issues, and was unlawful, unfair and malevolent resulting in his privileges belonging to him as a member being terminated.
- c. That the Union maliciously rescinded Dr. Santucci's eligibility to seek Union office via the Suspensions.
- d. That the ExCo's actions directly contravene Dr. Santucci's constitutionally derived rights imbued to him via Articles and sections of the Trade Union and Labour Relations (Consolidation) Act 2021 (the "**2021 TULRA**") and: (i) were designed to silence him; (ii) damage his professional reputation; and (iii) cause him to suffer damage and loss.
- e. That the Union has failed to uphold the principles of procedural fairness; disregarded Dr. Santucci's constitutionally derived rights of freedom of speech and association, as well as his Union constitutionally derived right to query and ultimately challenge the leadership.

Relief Sought

7. Thus, Dr. Santucci sought the following:
 - a. A declaration that Dr. Santucci's suspension by the Union was maliciously motivated and *ultra vires* Article VIII(3) - Discipline, and the principle of due process;
 - b. A declaration that the Union attempted to stifle the constitutional derived rights of Dr. Santucci and deliberately or otherwise flouted the principle of natural justice;
 - c. A declaration that the Union failed to fulfill its legal duty of fair representation and discriminated against Dr. Santucci;
 - d. A declaration that the Union's actions were *ultra virus* sections 20(1)(b), 21, 29, and 32 of the 2021 TULRA.

- e. A declaration that the latest Union election be declared null and void and that the ExCo be barred as their actions towards Dr. Santucci are akin or like acts described in section 32 of the 2021 TULRA;
- f. Damages against the Union for its failure to fulfill its legal duty of fair representation; and
- g. An account of profits against the Union.

The Defence

8. The Union's case is that it denied the allegations in the claim. Aspects of the Defence included the following:
 - a. Dr. Santucci was a member of the Union until his Interim Suspension pursuant to Article VIII(3) on 14 October 2021 and his Final Suspension was moved and seconded by the General Membership of the Union at a SGMM on 4 November 2021.
 - b. The Union is governed by the Union Constitution. The BGC is a meeting of the General Membership through which actions are approved including the appointment of members of the ExCo, approval of Collective Agreements and annual budgets. The General Membership is a body recognized by the Union Constitution, and from which authority may be delegated.
 - c. It was denied that the June Communique highlighted "sweeping changes" which were not authorized by the Supreme Authority. Rather, it was an extensive document which apprised the General Membership of the ExCo's progress made with certain initiatives and to inform the membership of other key developments, each of which were carried out with the required authorisation.
 - d. The position of General Secretary-Designate is a validly constituted position pursuant to Article VI(7)(c) of the Union Constitution.
 - e. Dr. Santucci submitted the Meeting Request by a letter dated 1 September 2021, providing a list of resolutions he proposed, including the revocation of the Union's anti-bullying and sexual harassment policies.

- f. The then GS informed Dr. Santucci that the Meeting Request could not be accommodated at the time due to escalating Covid-19 positive cases. The requirement that General Meetings be held in private made it impossible for an SGMM to be held via electronic means. Further, an SGMM required a quorum of twenty-five (25) members but the Bermuda Government had limited the number of persons who could attend large group gatherings to 10; exemptions were not being granted.
- g. By a letter dated 29 September 2021 the GS informed Dr. Santucci that his Meeting Request would need to be delayed.
- h. The purpose of the ERM was to remind Dr. Santucci of his duty of confidentiality, that being to respect the Union's request that information disseminated by the ExCo to its members should remain within the Union. On 30 September 2021, the Union was contacted by a RG reporter who had indicated that she had been in contact with Dr. Santucci. A further purpose of the ERM was to make the ExCo and union representatives aware of a pending news report and to allow Dr. Santucci an opportunity to explain why he had shared information with the reporter.
- i. The Union denied that Dr. Santucci had been attacked at the meeting.
- j. On 4 October 2021 the RG published a news article quoting Dr. Santucci extensively and discussed the Union and Dr. Santucci, including details of the June Communique and the Meeting Request.
- k. The October Communique was marked "For Internal Dissemination Only". On 7 October 2021, a RG reporter contacted the Union seeking comment on a further report she intended to write about the Union, having stated that she had had contact with Dr. Santucci and having referenced the October Communique. An article did appear in the RG on 12 October 2021. The Union denied that it accused Dr. Santucci of treason. On 14 October 2021, the Union informed Dr. Santucci of the Interim Suspension and referred to the Union Constitution in respect of potential for expulsion. On the 15 October 2021, the RG published a story about Dr. Santucci and the Union. The Union denies that Dr. Santucci is a whistleblower and does not qualify for protection pursuant to section 3 of the Good Governance Act 2012.

- l. Dr. Santucci attended the SGMM, made representations which were considered by the General Membership which then voted to suspend him for 2 years.
- m. The Union denied that they had deprived Dr. Santucci of any his rights under the Union Constitution or the 2021 TULRA, rather the Suspensions were carried out in accordance with the Union Constitution and in a manner which observes common law principles.
- n. The Union denied that Dr. Santucci had suffered loss and damage as the union representative role is an unpaid position. The Union's position was that Dr. Santucci was not entitled to any of the relief sought.

The Union Constitution

9. Article IV "Funds" includes as follows:

1) The Funds of the Union may be applied for any or all of the following purposes:

- a) for furtherance of charitable or educational purposes;*
- b) The efficient administration of the Union;*
- c) The publication of a newspaper, journal, or bulletin;*
- d) In general the furtherance of the objectives set out in Article II.*

3) The end of the Union's fiscal year shall be 30th June in each year and an audited account shall be presented by the Treasurer to the General membership before 15th November each year.

10. Article VI "Organization of Union" includes as follows:

(1) The Supreme Authority of the Union shall be vested in the Biennial General Conference, and, subject to that Authority, the Union shall be governed by the Executive Committee and, in between meeting of the Executive Committee, by the Officers of the Executive Committee.

(2) The organizational structure of the Union shall be as follows:

- i. Biennial General Conference/General Membership Meeting*
- ii. Executive Committee*
- iii. Officers of the Executive Committee*

(6) General Membership Meeting

All formal meetings of the members shall be private. Any person not a member may be invited to attend for a special purpose. He/she may be allowed to speak, but no other person other than a bona fide member may vote at a meeting.

7) Executive Committee

(a) There shall be an Executive Committee in which the management of the Union is vested. Voting members of the Executive Committee shall be:

...

(b) The Executive Committee, which consists of the Officers of the Union and representatives of the members, is empowered to make policy decisions for the directors of the activities of the Union as a whole within the bounds of the Constitution, Regulations, Schedules, etc., existent at the time. The Executive Committee is also responsible for the day to day organization and management of the affairs of the Union.

(e) The Executive Committee shall appoint a Secretariat, including a General Secretary, sufficient to implement and assist in the affairs of the Union. The duties which the General Secretary is expected to perform shall be detailed in writing by way of a formal contract.

9) Duties of Officers

(c) The Recording Secretary shall supervise the keeping of minutes or records of Biennial General Conferences, General Membership Meetings, Executive Committee Meetings, and meetings of Executive Officers, and shall ensure that such records are available when required.

(d) The Treasurer shall be responsible to the Union for the proper control of accounts and the recording of receipts and expenditure.

12) Chair of Authority

The entire membership of the Union shall be expected to carry out all decisions of the Union arrived at through the duly constituted chain of authority, provided that:

(a) The Executive Committee shall have the power to reverse or modify a decision made by the General Secretary or President; and

(b) The General Membership Meeting shall have the power to modify or reverse a decision of the Executive Committee; and

(c) The Biennial General Conference shall have the power to reverse or modify a decision of the Executive Committee.

(d) Provided that in the case of (a), (b) and (c), above, two-thirds majority of those persons who are present and eligible to vote, modify or reverse a decision. A vote on the above may held by secret ballot if it is the decision of the majority of members present.

11. Article VIII – Discipline states as follows:

(1) ...

(3) Any member [sic] [may/shall] be suspended by the Executive Committee, and later expelled from the union, if the Executive Committee's proposed action is endorsed by a simple majority vote at the next General Meeting. The number [sic] [member] under

suspension shall have the right to be present at the General Meeting, and may speak on his\her behalf.

12. Article IX – Audit states as follows:

1) An independent Auditor shall be appointed at the Biennial Meeting. The auditor shall audit the account of the Union and, in doing so, shall comply with all trade union regulations.

13. Article XI – Amendments

Any amendment(s) to this constitution, or the making of additional articles, or the rescinding of any of these articles, may be made at any General Membership Meeting, providing that written notice of the proposed amendment(s) has\ have been given at the previous General Membership Meeting. All amendments must be approved by a two-thirds majority vote of members present at the meeting

The Trial - Evidence

Chronology and evidence not in dispute

14. The chronology of relevant events can be taken from the summary of pleadings as set out above. There was evidence that generally was not in dispute although finer points are in dispute. The following evidence was not in dispute:

- a. On or around 22 - 25 June 2021 the ExCo issued the June Communique which provided certain information about changes including about the Issues. The June Communique was headed “Members’ Communique - For Internal Dissemination Only”. The first paragraph informed that the ExCo would like to highlight the progress made in the areas of Union reform, succession planning, representation, and Union staffing. The substantive content included sections on ‘Our Starting Vision’, our “Completed Work’ and “Our Office Structure”. The Covid-19 pandemic was referred to in various areas of the Communique.
- b. Dr. Santucci disagreed with the changes, taking the view that they were adopted by the ExCo without proper authority.
- c. After some discussion with the officials on the ExCo, Dr. Santucci submitted the letter of 8 September 2021 requesting the SGMM accompanied by: (i) a list of

forty-six (46) signatories in support of the meeting request; (ii) a proposed agenda of eight (8) items; and (iii) a list of ten (10) motions to be considered.

- d. On 21 September 2021, the Union (GS Anthnoy Wolffe) sent a letter to Dr. Santucci. It informed Dr. Santucci that: (i) the offer to use the Berkley School field to host the SGMM did not meet the criteria of privacy for a Union Meeting; (ii) the Covid-19 pandemic was providing challenges to host a General Membership meeting; (iii) The ExCo remained committed to hosting safely such a meeting abiding by the Union Constitution and Covid-19 pandemic regulations; it sought to provide some answers to Dr. Santucci's questions; (iv) expressed hope to hold a General Membership Meeting by the constitutional deadline as soon as it was safe to do so, asking for agreement to hold one meeting when all issues could be addressed, noting that it was not possible to have the meeting before the third week in October 2021.
- e. At some point between 21 – 29 September 2021, Dr. Santucci had communication with a RG reporter (it matters not who initiated the contact) to complain about the Union's delay in convening the SGMM. He shared details of the contents of the June Communique with the reporter and gave his comments.
- f. On 29 September 2021, Dr. Santucci submitted his nomination form for the position of Vice President and Counsellor Representative.
- g. On 30 September 2021, the Union was contacted by a RG reporter in relation to the comments of Dr. Santucci and concerning the Union's June Communique.
- h. Also on 30 September 2021, the Union held the ERM with the ExCo and union representatives, including Dr. Santucci. Members at the meeting questioned Dr. Santucci about sharing Union information with the RG. Dr. Santucci did not deny sharing the June Communique and said that he believed it was his right to do so. Members were reminded that Union business was confidential.
- i. On 4 October 2021, the RG published an article referring to the June Communique quoting the Plaintiff in relation to his discontent with the Union.
- j. Also on 4 October 2021, the Union issued the October Communique also headed "Members' Communique - For Internal Dissemination Only". It made reference to Dr. Santucci's request for a SGMM and the challenges to host such a SGMM. It

asked members to address any concerns with the Union using established protocols, which did not involve informing the media. In addressing the Meeting Request, it stated at paragraph 3 *“The initial request was handled well, in line with our constitution and in no way contentious. What has transpired since this letter was submitted, however, has been nothing short of treasonous.”*

- k. On 7 October 2021, the Union was again contacted by a RG reporter. The reporter confirmed that she had spoken to Dr. Santucci and planned to publish a follow up article in relation to the October Communique and further quotes.
- l. On 14 October 2021, Dr. Santucci received the Interim Suspension from the Union pursuant to Article VIII(3) of the Union Constitution, pending ratification by the General Membership. It stated that the ExCo’s decision was based on a sequence of events of the preceding weeks, in particular 3 reasons (the **“Suspension Reasons”**):
 - i. *Media – two media articles subsequent to Dr. Santucci’s conversations with the media regarding internal Union business which should have been kept confidential;*
 - ii. *Representatives Meeting – the information shared at the meeting is confidential and expected, as agreed, that all Representatives adhere to the designation strictly; and*
 - iii. *Internal Communique – All internal communications are marked “For Internal Dissemination Only” to be discussed within the confines of the Union membership. Any communication of Union Business to outside agencies represents a complete lack of discretion, as well as a breach of trust.*
- m. On 15 October 2021, the RG published a subsequent article extensively quoting Dr. Santucci and detailing the October Communique.
- n. On 4 November 2021, the Union held a SGMM which included Dr. Santucci’s Interim Suspension on the agenda. Dr. Santucci spoke on his behalf in relation to the Interim Suspension followed by other members sharing their views. A member moved that Dr. Santucci’s Interim Suspension be extended for 2 years, the motion was seconded, and the General Membership voted in favour of the Final Suspension

– fifty (50) members were in favour of the Final Suspension, seven (7) were against and two (2) members abstained from the vote.

Evidence at Trial – for the Plaintiff

15. The trial took place with evidence given by witnesses for the parties.

16. For Dr. Santucci's case, Dr. Santucci gave evidence along with (i) Keisha Douglas, Principal of the Berkeley; (ii) Tiannia Symonds, Deputy Principal of the Berkeley; (iii) Dwight Jackson; (iv) Shannon James; (v) Tyrone McHardy; and (vi) Kim Lightbourne.

17. Dr. Santucci – Dr. Santucci stated that the ExCo violated his rights under the principles of natural justice, his constitutional rights as informed by the Bermuda Constitution and his rights as a member of the Union under the Union Constitution. He stated that the ExCo acted *ultra vires* by acting as the Supreme Authority, in matters that first required the collective of the General Membership. He stated that his rights were violated when the ExCo: (i) suspended him without identifying Articles and Principles of the Union Constitution that he had violated; (ii) denied him a proper hearing under the principles of natural justice; (iii) used the suspension to nullify his potential candidacy for potential election to the ExCo; and (iv) described him as “treasonous” in the October Communique which was designed to malign his character and make him appear a less desirable candidate in the election process.

18. Dr. Santucci stated that all the answers he sought should have been presented by the ExCo for approval or rejection by the Supreme Authority, the General Membership.

19. Dr. Santucci stated that the one of the most serious failings of the ExCo to the Constitution and the General membership was the outstanding audits pursuant to Article IV(3), Article VI(9)(d) and Article IX.

20. Dr. Santucci stated that a retro-active approval process for the termination of Dr. Charles was unconstitutional as it was not accepted by the General Membership prior to its occurrence nor was there a clear and concise presentation of facts warranting such an

occurrence. Thus, the non-disclosure agreement in respect of Dr. Charles should be seen as an unapproved process by the General Membership.

21. Dr. Santucci set out the chronology. He stated that he submitted documents on behalf of 46 other members seeking a SGMM to address issues including the status of annual financial audits for 2017, 2018, 2019 and 2020. He stated that on 29 September 2021 he submitted his nomination form for the Union positions of Vice President and Counsellor Representative.
22. Dr Santucci stated that at the ERM he was attacked and under siege when it was stated that he was to blame for the Union being contacted by a RG reporter about the June Communique and his email dated 1 July 2021 sent to the President.
23. Dr. Santucci stated that: (i) on 12 October 2021, the RG published an article in which he was accused of treason; (ii) on 14 October 2021, he received the letter informing him of his suspension; (iii) on 15 October 2021 the RG published an article labelling him as a whistle blower and informing of his suspension. He stated that through the actions of the Union, his reputation, both professionally and personally has been besmirched, where he has had strangers asking him if he has been behaving himself. He has had to explain himself in respect of the term “treasonous” and he no longer enjoys the freedom to volunteer to participate in events/activities for fear of having to give further explanations about such labels.
24. Dr. Santucci stated that he was suspended for a period of 2 years which is by far the harshest punishment ever meted out for such a characterization violation. He stated that he was still seeking clarity on the ExCo’s application of the Articles and Principles of the Union Constitution in support of the Suspension Reasons, as he found no support for them in the Constitution which he stated does not portray the Union as: (i) a secret society; (ii) an organization which requires silence from its membership; and (iii) an organization that subordinates his rights under the Bermuda Constitution to the dictates of the ExCo.
25. Dr. Santucci stated that the Union Constitution does not speak to issues pertaining to the media, representative meetings and confidentiality or the existence of the internal

communiqué. Therefore he was baffled as to how the ExCo had the authority to: (i) implement an operational policy around silence and secrecy that has no basis in the Union Constitution and is *ultra vires*; (ii) how it suspends members for not adhering to policies that are not reflected in the Union Constitution; and (iii) how it operates based upon unknown policies and procedures that members are unaware of until it suits their purpose.

26. Dr. Santucci stated that he took umbrage with the use of the word “treasonous” in describing his behavior, such use being unwarranted and reckless, which could have far reaching implications and can negatively impact his future employment and volunteer opportunities.

27. On cross-examination Dr. Santucci stated, amongst other things, that:

- a. Although the June Communiqué has “For Internal Dissemination Only” at the top, and he received it as a member of the Union, it was an opinion as to whether it was clear not to disseminate it outside of Union membership of 900 people. He took the same view when challenged that it was for internal sharing and not expected to be shared externally, a position which he saw differently. Dr. Santucci stated that based on his knowledge and experience, he was not going to keep secrets.
- b. Dr. Santucci agreed that in his email dated 9 September 2021 to the Berkeley Members about Union documentation, he wrote, at paragraph 3, “*A copy of the documentation has been made available through the library for your review. It is not to be photocopied/removed or released for public consumption. This is a Union Matter, which we are addressing according to the [Union] Constitution.*” He accepted that he had adhered to the obligation to share the documentation internally.
- c. He accepted that in his letter dated 8 September 2021 to the Union President, he suggested using the Berkeley school field for a large gathering. However, he had not contacted the Government about holding a large gathering as he was waiting for the Union’s response. He accepted that he had received the Union’s letter dated 21 September 2021 which stated: (i) “*Per Article VI section 6 General Membership Meetings: All formal meetings of the members shall be private.*”; (ii) the Berkeley field location did not meet the criteria; and (iii) the Union had been trying to arrange a meeting since March without success due to the Covid-19 pandemic restrictions;

- (iv) it was proposed to hold the SGMM and AGM at the same time. He accepted that he received a letter dated 29 September 2021 from the Union about the difficulties in arranging a membership meeting which informed him that the Union would keep him updated on efforts to secure a date for the requested meeting.
- d. In reference to the RG reporter's email dated 30 September 2021 to the Union, where they referred to their discussions with him, Dr. Santucci stated that he had changed his mind about the dissemination of Union information to external entities. This was based on his discussion with staff at the Berkeley about Dr. Charles and the fact that he had not received a response. He accepted that he received a letter from the GS, but not the President, and thus his response was to go the RG, noting that he was not frustrated, but he was disappointed, further noting that if the meeting had taken place earlier he would not have contacted the RG.
 - e. He attended the 30 September 2021 ERM, but he signed on late and had to leave earlier – describing the meeting as the “1st Ambush”.
 - f. He was referred to the transcript of the 30 September 2021 meeting. He stood by his explanation as to why he went to the media, the essence being that if the requested meeting was held, there would be no need to go to the media. He stated that he received a number of calls from people, including the media, and felt it was his right to share with the media. He accepted that at no point did he say that it was a lack of transparency, even up to the trial, some three years on from the relevant circumstances.
 - g. He accepted that at page 20 of the ERM Transcript he was explaining that he was defending his interpretation of the Union Constitution, namely that decisions that were made by the ExCo were not in accordance with the Union Constitution. He explained that his interpretation and what he thinks is right trumped the Union's expectation of confidentiality, which he asserted did not exist.
 - h. When challenged that when being asked why he went to the media was not an ambush, Dr. Santucci maintained that there were 2 ambushes as the meeting was not a friendly meeting and there was no attempt to get to the truth.

- i. He accepted the contents of the October Communique which at paragraph 5 emphasised raising concerns within the Union and to use existing avenues which did not include the media.
- j. He accepted that there was no provision in the Union Constitution which provided for members to go to the media, noting that there was no provision restricting the same.
- k. He accepted that he had had discussions with the RG reporter about the October Communique which was the second dissemination to external entities. He stated that it was the Union's view that there was an overarching duty to keep Union business private within the Union. However, his view was that the Union took that position when it suited them. He did not accept that Union business must be kept private as he had a difficulty in that he was aware of breaches of that position.
- l. In respect of his suspension, he was referred to the Minutes of the SGMM of 4 November 2021. He accepted that he had an opportunity to speak noting that he did not have a disciplinary hearing, when he would have expected a meeting in person.
- m. He agreed that the results of the vote by the General Membership, the supreme authority, showed that an overwhelming number of members agreed with the Suspensions.
- n. He accepted that he did not receive votes from the 46 members who signed the Petition, noting that he was not surprised as some members did not show up. He reiterated that he believed in unionism and still does to a certain point, noting that he never stopped paying his dues, as his problem was not with the Union but with the leadership. His membership has been reactivated.

28. Dr. Santucci was re-examined when he stated, amongst other things, that:

- a. He spoke to the RG because the Union controls the processes, it was not easy for dissenting views to be voiced, people have a right to be heard, some people are not happy but say nothing. However, when he spoke out, he was branded as treasonous, an offence which is normally punishable by death.
- b. He recalled his public service as a Senator in the legislature, where he had an understanding of the Bermuda Constitution and his right to speak freely which was

different from the Communiques which seemed to remove his right to speak freely, thus trumping the Bermuda Constitution.

- c. He stated that he experienced 2 ambushes; (i) the zoom meeting; and (ii) the disciplinary hearing that he was not informed of and which took place in his absence, noting that if an employer of a Union member proceeded this way the Union would be “all over” that employer. He maintained that he was not told of the contents of the meeting noting that he should have been told who was present, who moved the motion to suspend him and who voted.

29. Ms. Douglas - Ms. Douglas is the principal of the Berkeley. Her evidence was that Dr. Santucci was well qualified for the role as union representative having been voted in wholeheartedly by the staff. She stated that he took steps to address anything that he did not understand. She was of the view that the Union issues with Dr. Santucci had affected the Berkeley and she was interested to reach an amicable way forward. On cross-examination she stated, amongst other things, that:

- a. Dr. Santucci’s suspension did not affect his ability to serve students.
- b. He was an effective representative who brought concerns and was solution focused.
- c. The suspension caused disquiet among Berkley teachers at the Berkely.
- d. She encouraged Dr. Santucci to reach out to the President of the Union, which he did do over the summer break.
- e. During her term as President, the GS would speak to the media, which was the proper protocol, although some members did speak to the media.
- f. She provided a character reference for Dr. Santucci in these proceedings.

30. Ms. Tiannia Symonds – Ms. Symonds was and is the deputy principal of the Berkeley. She had signed the Meeting Request letter on her own free will in order to obtain answers to questions and points raised in it. She stated that she and her school community were deeply concerned about the treatment of Dr. Santucci, noting that they had a right to ask the questions that they did. On cross-examination she stated, amongst other things, that:

- a. She attended the SGMM and voted against the suspension.

- b. She recognized that she had a right to bring a counter-motion that Dr. Santucci not be suspended.
- c. Since the suspension, no one has raised the issue again.

31. Dwight Jackson – Mr. Jackson was a past GS of the Union who stated that he put the Union Constitution first in this matter. He was of the view that the changes set out in the June Communique did not go through the proper progressive protocols according to the Union Constitution. He stated that the Berkeley Members were seeking an explanation from the ExCo in relation to the sudden and unceremonious departure of Dr. Michael Charles. He was of the view that Dr. Santucci had been suspended without a proper hearing. He stated that referring to Dr. Santucci's conduct as "treasonous" was regretful as it placed a stain on Dr. Santucci. On cross-examination he stated, amongst other things, that:

- a. He had never spoken to the media about Union business.
- b. He would not go as far as saying that it was incorrect for Dr. Santucci to speak to the media, an issue which was not covered by the Union Constitution. On re-examination he added that he did not want to infringe on that right to speak to the media, but the Union would deal with the issue by calling in the member and discussing it with them. However, this did not happen, as proceedings went straight to suspension.
- c. He was present in the ERM and agreed that Dr. Santucci was given a number of opportunities to explain himself. There was a specific item on the SGMM agenda for Dr. Santucci to speak and he did so.
- d. He agreed there was a need to balance freedom of speech with confidentiality.
- e. When an issue was being resolved, it was expected that the parties would not speak to the media on it.
- f. He and others spoke on Dr. Santucci's behalf whilst other members spoke against Dr. Santucci.
- g. The members were the Supreme Authority and when they voted, it indicated that the ExCo was correct.

32. Shannon James – Mr. James is a past president of the Union. His view was that the Suspension Reasons do not appear to be violations of the Constitution, rather they were concerns that should have been addressed. He was of the view that the ERM should not have involved union representatives which could subject the process to bias. He referred to a previous un-related matter which was dealt with by the ExCo. He viewed the use of the term “treasonous” as unwarranted which did not reflect the ethos and history of the Union. Further, he took the position that the ExCo had wrongly and unconstitutionally removed the Supreme Authority from the General Membership. On cross-examination he stated, amongst other things, that:
- a. He agreed that the press did not have a right to just freely know about Union business.
 - b. Some matters were handled by the ExCo and some required ratification by the General Membership which was the Supreme Authority which “called the shots”.
33. On re-examination he explained that sometimes when there was an internal issue to be resolved, Union trustees are people who can assist in resolving it.
34. Tyrone McHardy – Mr. Hardy was the former supervisor of Student Services at the Berkeley. He carried out the role of union representative once Dr. Santucci was suspended. He stated that he – and the Berkeley Members – were not clear on the reason for Dr. Santucci’s suspension and they were not aware of which Articles Dr. Santucci was supposed to have breached. He received a phone call to attend the Union office to review some ExCo’s minutes but he was of the view that he was being called in order to persuade him to withdraw his name from the Meeting Request letter. His position was that the ExCo has grossly maligned Dr. Santucci. On cross-examination he stated, amongst other things, that:
- a. He had wondered if there was any other resolution other than suspension.
 - b. Dr. Santucci had informed him that signatories to the Meeting Request letter were being asked to withdraw their signatures. He was aware that some people had withdrawn their signatures.

- c. At the meeting on 4 November 2021, after Dr. Santucci had been suspended and left the room, he could have taken up Dr. Santucci's motion but he did not.

35. Kim Lightbourne – Ms. Lightbourne was a former member and union representative at CedarBridge Academy. She has known Dr. Santucci since they were students at Sandys Secondary School and she worked with him at Bermuda College. She was the subject of disciplinary action previously from the ExCo which resulted in a suspension for six months without her matter being placed before the General Membership. Thus, she was of the view that the process followed by the ExCo was different from the process she faced. She disagreed with Dr. Santucci being described as “treasonous”. On cross-examination she stated, amongst other things, that:

- a. The action she spoke about had occurred approximately 20 years ago during the period 2004/5 – 2008 as she had left CedarBridge Academy 16 years ago in 2008. She was given a letter in respect of her suspension. The General Membership did not ratify it. Her membership ended in 2008 when she left.

36. Dr. Santucci had caused *sub poenas* to be issued for several witnesses who in turn filed witness statements. Their evidence was accepted without cross-examination by counsel for the Union. In general, those witnesses took the position that Dr. Santucci had acted in breach of Union policies, had been afforded due process and had been given the opportunity to present his case and to be heard. Those witnesses were:

- a. Vejay Steede – He was a member of the Union and served as the public relations manager for the Union. After hearing submissions from Union members, he took a dim view of Dr. Santucci's actions and he voted for Dr. Santucci's suspension. He was of the view that Dr. Santucci's conduct was treasonous.
- b. Crenstant Williams – He was a member of the ExCo and Vice-President of the Union at the material time. He voted in favour of Dr. Santucci's suspensions at both meetings.
- c. Carlton Johnson – He was a trustee of the Union at the material time. He was present at the meetings but as a trustee, he did not have the right to vote. He was of the view that Dr. Santucci's conduct was treasonous.

- d. Jonathan Tankard – In October 2021, he was a vice-president of the Union. In 2023, he was elected President of the Union. He abstained from voting in the ExCo Meeting and the SGMM in respect of the conduct of Dr. Santucci. He was of the view that Dr. Santucci's conduct was a betrayal of the ExCo and mutinous, synonymous with treason.
- e. Laurel Burns – She was a member of the ExCo at the material time. She voted in favour of suspending Dr. Santucci at both meetings.
- f. Elicia Albuoy – She was a member of the Union at the material time. She voted in favour of Dr. Santucci's suspension at the SGMM.
- g. Kathlyn Dyer – She was a member of the Union. She voted in favour of Dr. Santucci's suspension at the SGMM.
- h. Dr. Suzette Bean – She was elected to the ExCo in October 2020. She abstained from voting in the ExCo meeting. However, in the SGMM, she voted in favour of suspending Dr. Santucci.

Evidence at Trial – for the Defendant

- 37. For the Defendant's case, evidence was given by: (i) Anthony Wolffe, former GS of the Union; and (ii) Nishanthi Bailey.
- 38. Anthony Wolffe – Mr. Wolffe was a former President of the Union and for the last 30 years has been involved in the ExCo. In respect of this case, he was the GS at all material times. In his roles, he was required to understand and apply the Union Constitution. He stated that the Union has 900 members, but during the Covid-19 pandemic, it was difficult to hold meetings with all members or even the ExCo due to Government restrictions on large gatherings. He stated that union representatives well understood that matters discussed with them are for dissemination with the Union only and not for public consumption. Confidentiality and discretion with respect to Union business was an important part of the Union's ability to maintain trust and confidence of its members and the public at large.

39. Mr. Wolffe recapped the evidence that is not in dispute. He stated that on 30 September 2021, as a result of being contacted by the RG, the Union called an emergency ExCo meeting as well as an emergency meeting of the union representatives, and given the urgency, the meetings were held together. He stated that when Dr. Santucci stated that it was his right to share the June Communique with the media, he did not deny that he did so in breach of confidence and he did not provide any further explanation. He did not accept that Dr. Santucci was attacked and under siege at the meeting; rather the union representatives were displeased with his actions and confronted him about it.
40. Mr. Wolffe did not accept Dr. Santucci's position that confidentiality is not supported within the Constitution, stating that Article II(2) states that the objectives of the Union shall be "*to promote a high standard of professional ethics and a high standard of professional competence.*" He stated that although confidentiality is not specifically mentioned, Dr. Santucci knows that confidentiality is encompassed in upholding standards of professional ethics and that meetings and Union business are meant to be private. Mr. Wolffe explained that at the meeting on 30 September 2021, it was explained to Dr. Santucci that the business of the Union is for members and is meant to be private and confidential, however Dr. Santucci spoke to the reporter again regarding Union business. Mr. Wolffe stated that the ExCo and the union representatives are privy to sensitive, confidential information prior to it being presented to the wider membership, and as there is an overarching duty of confidentiality, Dr. Santucci had broken the trust and confidence with the Exco, union representatives and the General Membership.
41. Mr. Wolffe stated that after the meeting on 14 October 2021 when the ExCo suspended Dr. Santucci, he was provided with a letter informing of the Interim Suspension, the reasons for it and explaining that he would have the opportunity to present and speak on his own behalf at the upcoming general meeting, citing Article VIII. He stated that a consequence of the suspension was that Dr. Santucci was no longer eligible for election as the Berkeley union representative. Mr. Wolffe explained that under Article VIII, when a member is suspended, the member has the right to be present and speak at the next General Membership Meeting when the members will consider whether the suspension should be ended, continued or if appropriate whether the member should be expelled – such sanctions

decided by a simple majority vote at the meeting. Mr. Wolffe did not attend the SGMM on 4 November 2021 due to illness but stated that as the membership upheld Dr. Santucci's suspension, it confirmed the practice of confidentiality, otherwise they would have reinstated his membership.

42. In respect of the accounts, Mr. Wolffe stated that 2017 audited financial statements had been filed with the Registrar as required by the 2021 TULRA and Article VI. Each year, including 2017 – 2020, the unaudited financial statements had been placed before the membership for consideration along with an update regarding their audited status. At the BGC held on 10 November 2021, the 2020 accounts were placed before the membership. The 2018 – 2020 financial statements have been prepared for audit and provided to the Union's auditors as well as the Registrar under the 2021 TULRA. The audited financial statements for the years 2018 – 2020 inclusive were filed with the Registrar. He rejected the assertion that the Union had not kept its members informed about the status of its financial statements or been in deliberate breach of the 2021 TULRA.

43. On cross-examination Mr. Wolffe stated, amongst other things, that:

- a. That the General Membership was the Supreme Authority which was the highest level of authority in the Union, followed by the ExCo, then the Officers. The General Membership, if they so choose, will ratify proposals brought by the ExCo.
- b. He agreed that the ExCo, the Officers and the union representatives were empowered to make policy decisions for the Union as a whole, within the parameters of the Constitution and regulations existing at the time.
- c. He agreed that Article VI Organization of the Union section 7(e) set out that "*The ExCo shall appoint a secretariat, including a GS, sufficient to implement and assist in the affairs of the Union.*" [emphasis added]
- d. He confirmed the chain of authority as set out in Article VI(12).
- e. He agreed that the June Communique used the phrase "*Our Completed Work*" which was about the implementation of various policies and procedures, but it did not say that it was to be presented to the Supreme Authority for ratification. He disagreed that the phrase was not the best phrase to use.

- f. He confirmed the authority of the ExCo, which was existing at the material time, as set out in Article VI(7)(b).
- g. He agreed that nowhere in the Constitution did it talk about confidentiality and breaches of the same.
- h. In respect of his letter to Dr. Santucci dated 14 October 2021 advising of the Interim Suspension and ineligibility to run for election, he denied that it was *ultra vires* because the suspension had not yet been ratified, explaining that the Constitution allowed the ExCo to take actions.
- i. He disagreed that there should be minutes for the meeting held on 22 November 2021 pursuant to Article VI(9)(c) as the article says “*when required*”.
- j. He agreed that in the past, members who faced suspension were advised of that potential outcome before a meeting and the charges they faced.
- k. He agreed that the purpose of the ERM held on 30 September 2021 was to ask Dr. Santucci about his involvement with the media. He explained that no representative was informed of the agenda beforehand.
- l. He agreed that the ExCo had a meeting, which he attended, to discuss the suspension of Dr. Santucci but that there was no documentation of that meeting or how the ExCo had voted. He accepted that it was the duty of the Recording Secretary to take minutes and it would be a breach of Article VI(9)(c) not to do so. He agreed at the meeting, there was either a motion or a consensus to suspend Dr. Santucci but he did not recall who moved such a motion. Also, there was a motion to deny a candidacy of Dr. Santucci for election as set out in the letter. He agreed that the full suspension had to be ratified by the Supreme Authority.
- m. He agreed that Article IV(1) Funds provided for funds to be used for the publication of a newspaper. He agreed that there was no provision in the Constitution that stated that a publication was for internal use only but he explained that it was expected that such publications would be for internal dissemination.
- n. He denied that Dr. Santucci had been wrongly suspended by the ExCo as he had been given no notice and he denied that Dr. Santucci was wrongly removed as a candidate for election.

- o. He denied that the ExCo had branded Dr. Santucci as “treasonous” to deliberately affect his candidacy for election.
- p. He agreed that Dr. Santucci had completed all his paperwork for candidacy in the election
- q. He stated that Dr. Santucci was involved in the union representative meetings and was well aware of changes and that they had to be ratified by the General Membership.
- r. He did not agree that Dr. Santucci had not violated the Constitution.
- s. He did not agree that the suspension was *ultra vires* Article VI(7)(b) and that the ExCo had abused their authority in violation of the Constitution.

44. On re-examination, Mr. Wolffe stated:

- a. The Union cannot achieve its objectives without confidentiality, because it was imperative to keep matters of importance within the membership.
- b. It was expected that Members’ Communiques were to be kept to the membership.
- c. That Article VI(6) stated that all formal meetings of members shall be private.
- d. That Article VI(7)(c) allows the ExCo to co-opt person to advise or serve in a special capacity.
- e. That during the period of an Interim Suspension and a Final Suspension, a member would not be allowed to run for election.

45. Nishanthi Bailey – Ms. Bailey was the president of the Union at the material time having been elected in 2019. She has been an active member of the Union and has served as a school representative, middle school executive representative and treasurer of the Union. She stated that the Supreme Authority of the Union is the BGC, which is a meeting of the General Membership, held every two years, in which all officers of the Union are elected except for the GS who is appointed. In between BGCs, the Union is governed by the ExCo and in between meetings of the ExCo the Union is governed by Officers of the ExCo. Since the 2019 BGC, the ExCo commenced a round of modernization. They issued the June Communique to inform members of developments. Thereafter she corresponded with the Plaintiff about his concerns about the June Communique. In respect of the Meeting Request

for an SGMM, she stated that the ExCo decided that due to Government restrictions on meetings, they could not conduct an SGMM at the Berkeley field or by zoom. In any event, she was not able to submit an application for an exemption for a large meeting until October 2021.

46. Ms. Bailey stated that, once the Union was contacted by the RG, she called an ERM with the ExCo and the Union Representatives in order to inform them of the RG's enquiries. She stated that while it was not unusual to have the Union Representatives and the ExCo meet together, in the interests of time, the ExCo determined this was reasonable. The meeting was recorded and a transcript produced. At the start of the meeting she spoke of the importance of confidentiality. She stated that Dr. Santucci explained that he felt it was his right to speak to the media about Union business.
47. Ms. Bailey stated that after the RG published the article on 4 October 2021, Union members expressed their general disapproval of Dr. Santucci's actions. The Union then published the October Communique. Ms. Bailey did not accept that Dr. Santucci was labelled as "treasonous", rather his actions were described as "treasonous". On 7 October 2021 the RG contacted her again, this time about its contact with Dr. Santucci about the October Communique. She was surprised that Dr. Santucci had spoken to the media again after he had been apprised of the concern of members of the Union about speaking to the media.
48. Ms. Bailey stated that on 14 October 2021 the ExCo met and decided to suspend Dr. Santucci pursuant to Article VIII(3). The GS wrote to him to inform him about the suspension, that he was ineligible to run for election and would be provided the opportunity to attend the General Membership Meeting should he wish to make representations to the membership. Ms. Bailey stated that on 4 November the SGMM was held, the meeting was recorded and a transcript produced. She called the meeting to order, gave context, and allowed Dr. Santucci to speak. He explained that he was suspended, without a disciplinary hearing, for a violation of Union practice of not speaking to the press, which was not a policy within the Constitution. Members spoke and Dr. Santucci was allowed to respond. There was a motion that Dr. Santucci's suspension be upheld and remain in place for 2

years, with the results of the vote being 50 in favour of the suspension, 7 against and 2 abstentions.

49. Ms. Bailey stated that she did not ask ExCo members to contact members to have them withdraw their signatures to the letter for an SGMM. She did not accept that the ExCo had besmirched Dr. Santucci's reputation, rather he had besmirched his own reputation by his conduct.

50. Ms. Bailey stated that there was an overarching duty of confidentiality when dealing with Union business which was made clear to Dr. Santucci on several occasions, yet he chose to continue to place confidential Union business in the public arena.

51. On cross-examination Mr. Bailey stated, amongst other things, that:

- a. In an ExCo meeting with Representatives on 22 June 2021, some changes were discussed. This was before the June Communique was issued. She explained that she did not state this in her witness statement, further explaining that she had met with Union Representatives on a monthly basis and they had been informed of the changes and work of the Union.
- b. When challenged that confidentiality (and an overarching duty of confidentiality) was not a construct of the Constitution, she disagreed, relying on Article VI(6) that Union meetings and business should be kept private, noting that the Union deals with sensitive and private information and that confidentiality is ingrained in every aspect of Union business. Thus, it was a duty of confidentiality and a construct of unionism. When challenged that the ERM was not a General Membership meeting, she replied that it was a meeting of members. She explained that it was an expectation that Union business be kept private and confidential and not to be shared outside of the organization. She explained that the Constitution does not mention "solidarity", but that the Union was built on 105 years of operating on the basis of solidarity.
- c. She agreed that the Constitution did not say that Communiques could not be shared.
- d. She denied the Union was run according to the ExCo's own standard of compliance, but it was run according to the Constitution.

- e. The Constitution did not provide specific examples to warrant a suspension, but it provided the ExCo with the discretion to suspend a member.
- f. When challenged that the Constitution does not allow the ExCo to deny a member to run for election, she explained that, running for office is one of the highest rights, but that a suspension denies the rights of the Union to the suspended member.
- g. When challenged that Article II(5) Objectives provided members, including Dr. Santucci, with a protection, individually and collectively, to ensure that none of the civil, human and legal rights enjoyed by other Bermudian residents shall be denied its members, Ms. Bailey stated that all members have the rights, including free speech, but that there are consequences for their conduct. She denied that Dr. Santucci was suspended for exercising his rights under Article II(5) but was suspended for the Suspension Reasons. The Union had received a loud call from its members as a result of Dr. Santucci's actions and thus it had to protect its members who were upset that its business was in the media.
- h. When challenged that the RG reporter was not asking about sensitive information, she stated that the reporter was asking about Union business, based on what Dr. Santucci had told the reporter.
- i. Completed work does not mean ratified, explaining that the ExCo does it work and implement plans then reports it to the BGC. The work set out in the June Communique was ratified in the November General Membership meeting.
- j. Ms. Bailey agreed that the questions asked in the 4 November 2021 meeting (as set out in the SGMM Transcript at page 44) were generally the same questions asked by Dr. Santucci in his email dated 1 July to the Union and the questions asked by the RG reporter. However, she denied that the ExCo took umbrage with the RG reporter asking the questions and denied that those questions were used to suspend Dr. Santucci, explaining that the ExCo were concerned that Dr. Santucci had spoken to the media.
- k. Dr. Santucci's conduct being labelled treasonous has never been retracted.

The Bermuda Constitution and Legislation

52. The Bermuda Constitution (the “**Bermuda Constitution**”) states as follows:

Section 8 - Protection of freedom of conscience

8 (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) 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 provision which is reasonably required—

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited interference of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Section 9 - Protection of freedom of expression

9 (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) 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 provision—

(a) that is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights, reputations and freedom of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or

(b) that imposes restrictions upon public officers or teachers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of paragraph (b) of subsection (2) of this section in so far as that paragraph relates to public officers, “law” in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.

Section 15 - Enforcement of fundamental rights

15 (1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court established for Bermuda other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the foregoing provisions of this Chapter, the court in which the question has arisen shall refer the question to the Supreme Court unless, in its opinion, the raising of the question is merely frivolous or vexatious.

(4) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case:

Provided that no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature may by law confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Legislature may by law make, or provide for the making of, provision with respect to the practice and procedure—

(a) of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section;

(b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal;

(c) and of other courts in relation to references to the Supreme Court under subsection (3) of this section;

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought.

53. The 2021 TULRA states as follows:

Section 29 - Duty of officers of trade unions to render accounts

(1) Every treasurer or other officer of a trade union registered under this Act at such time and in such manner as may be prescribed by the constitution of the trade union, or at any time upon being required to do so by the trustees or by the committee of management or by the members of the trade union, shall render to the trustees, or to the committee of management, or to the members assembled at a meeting of the trade union

(as the case may be) a just and true account of—

(a) all moneys received and paid by him since he last rendered the like account and the balance then remaining in his hands; and

(b) all bonds or securities of the trade union.

...

The Issues

54. There are several main issues in this case as set out below which I will deal with in turn.

Issue 1 – Breach of Confidence – Balancing the Union’s expectation of confidentiality and Dr. Santucci’s freedom of expression

55. In my view, I should first deal with the issue of the Union’s expectation of confidentiality and Dr. Santucci’s claim to freedom of expression by speaking to the media and releasing documents to the media.

56. In the case of *The Commissioner of Police and The Attorney General v Bermuda Broadcasting Co Ltd et al* [2007] Bda L.R. 40 at 15 Ground CJ considered the law in respect of breach of confidence and injunctions. He stated as follows:

“15. ... *The principles applicable to an injunction were explained by Lord Goff in Attorney-General v Guardian Newspapers (No. 2) [1990] 1 AC 109 HL at 281 as follows:*

“I start with the broad general principle . . . that a duty of confidence arises when confidential information comes to the knowledge of a person (the confidant) in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others.”

16. However, where an injunction to restrain publication is concerned the cause of action for breach of confidence necessarily comes into conflict with the constitutionally enshrined right of freedom of expression, and, where publication by the press is concerned, with the freedom of that institution. The freedom of the press is not itself separately embodied in, or recognized by the Constitution, and so has to find its legislative expression in the principles governing freedom of expression generally, but as a principle it is well known and recognized by the law.”

57. Ground CJ then went on at paragraphs 17 to set out the provisions of the Bermuda Constitution section 9 Protection of freedom of expression. At paragraphs 18 and 19 he continued:

“18. It is important that in this respect the Constitution is in similar (although by no means identical terms) to Article 10 of the European Convention on Human Rights (‘the ECHR’)[Footnote7]. Because of this I consider that the authorities decided in the United Kingdom under the Human Rights Act 1998, which itself implements the ECHR, are (subject to the qualification in paragraph 21 below) of direct application to Bermuda.

Footnote 7:

Article 10 of the ECHR says: “ARTICLE 10

“1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

*19. The result of these conflicting considerations is that a Judge considering an injunction in a breach of confidence case has to perform a balancing exercise. This is particularly so where the confidential material may disclose impropriety: “The courts have, however, always refused to uphold the right to confidence when to do so would be to cover up wrongdoing. In *Gartside v. Outram* (1857) 26 L.J. Ch 113, it was said that there could be no confidence in iniquity. This approach has been developed in the modern authorities to include cases in which it is in the public interest that the confidential information should be disclosed: see *Initial Service Ltd. v. Putterill* [1968] 1 Q.B. 396, *Beloff v. Pressdram Ltd.* [1973] 1 A.E.R. 241 and *Lion Laboratories Ltd. v. Evans* [1985] Q.B. 526. This involves the judge in balancing the public interest in upholding the right to confidence, which is based on the moral principles of loyalty and fair dealing, against some other public interest that will be served by the publication of the confidential material. Even if the balance comes down in favour of publication, it does not follow that publication should be to the world through the media. In certain circumstances the public interest may be better served by a limited form of publication perhaps to the police or some other authority who can follow up a suspicion that wrongdoing may lurk beneath the cloak of confidence. Those authorities will be under a duty not to abuse the confidential information and to use it only for the purpose of their inquiry. If it turns out that the suspicions are without foundation, the confidence can then still be protected: see *Francome v. Mirror Group Newspapers Ltd.* [1984] 1 W.L.R. 892. On the other hand the circumstances may be such that the balance will come down in favour of allowing publication by the media, see *Lion Laboratories Ltd. v. Evans* [1985] Q.B. 526. Judges are used to carrying out this type of balancing exercise and I doubt if it is wise to try and formulate rules to guide the use of this discretion that will have to be exercised in widely differing and as yet unforeseen circumstances. I have no doubt, however, that in the case of a private claim to confidence, if the three elements of quality of confidence, obligation of confidence and detriment or potential detriment are established, the burden will lie upon the defendant to establish that some other overriding public interest should displace the plaintiff’s right to have his confidential information protected.” *Attorney-General v Guardian Newspapers (No. 2)* [1990] 1 AC 109 HL at 268 per Lord Griffiths.”*

58. In my view, Dr. Santucci's conduct amounted to a breach of confidence for several reasons as follows:

- a. The Union Constitution set out at Article VI(6) Organization of the Union – General Membership Meetings that “All formal meetings of the members shall be private.” The section defines the types of General Meetings as a General Membership meeting, a Special General meeting and an emergency general meeting.
- b. The June Communique and the October Communique were both marked “For Internal Dissemination Only”.
- c. The evidence that Dr. Santucci in his email of 9 September 2021 cautioned the Berkeley Members that the information he was sharing with them was not for public consumption but was being addressed according to the Union Constitution. Thus, it is clear to me that at the early stages of this matter, Dr. Santucci accepted that Union business was private.
- d. At the ERM on 30 September 2021 the Union reminded its members who were present at that meeting that Union business was confidential.
- e. The evidence of Mr. Wolffe who had a long career with the Union. I accept his evidence that union representatives were well aware that Union business was for internal dissemination only and not for public consumption. I also accept his evidence that confidentiality and discretion in Union business was an important part of the Union's ability to maintain trust and confidence of its members and the public at large.
- f. The evidence of Ms. Bailey who had a long career in the leadership of the Union. I accept her evidence that there was an overarching duty of confidentiality when dealing with Union business and that that was made clear to Dr. Santucci several times, which I take to mean after the RG reporter contacted the Union after the June Communique was issued.

59. I am guided by the *Bermuda Broadcasting* case, although the present case is not about injunctions, in undertaking a balancing exercise to resolve this factual point before moving on to other areas. Also, I rely on the principle stated by Lord Goff in the *Guardian*

Newspaper case to accept that there was a duty of confidence imposed on Dr. Santucci in his role as a member of the Union and as a Union Representative when he received information, in particular the Communiqués, in the circumstances that he had notice that the information was for internal dissemination only. I find that there was no impropriety or wrongdoing in the Union's conduct such that it warranted Dr. Santucci to commit acts of breach of confidence in light of the need for confidence in Union business as set out above. Thus, it follows that I am not satisfied that the Union's conduct amounted to disregarding Dr. Santucci's rights of freedom of conscience and freedom of expression. I found no merit in Dr. Santucci's arguments of contract theory and Union membership.

60. Dr. Santucci complains that his rights were infringed because the Union suspended him without identifying Articles and principles of the Union Constitution that he had violated. He maintained that there was no provision in the Union Constitution that prevented him from speaking to the media, agreeing also that there was no provision authorising him to speak to the media. There were varying views on this point by the witnesses. I accept that there is no evidence of a "disciplinary code" setting out offences or breaches to which Dr. Santucci seems to be alluding. However, I prefer the evidence of Mr. Wolffe who stated in essence that union representatives well understood that Union business was for internal discussion and not for public consumption in order to maintain trust and confidence of its members, relying on Article II(2) which set out that the objectives of the union were to promote a high standard of professional ethics and competence. I also prefer the evidence of Ms. Bailey who stated that confidentiality is ingrained in every aspect of Union business, also relying on Article VI(6) that all formal meetings shall be private (expressly limited to specific types of formal meetings). Thus, in my view, the Union held general principles of privacy and confidentiality, breaches of which need not be set down in a disciplinary code, but for which members could be held accountable in disciplinary proceedings.

Issue 2 – Bias – Whether the ExCo was guilty of bias or apparent bias when making the decision to impose the Interim Suspension

61. Dr. Santucci's claim did not include bias or apparent bias on the part of the ExCo. I have reviewed the evidence carefully in this case and I find no evidence in chief or cross examination on the lines of bias or apparent bias. Thus, the claim of bias has come late in the day in the nature of closing submissions shaping an argument based on bias. In any event, I agree with Mr. Masters that the Union Constitution specifically empowers the ExCo to make the decision on interim suspension in matters of member discipline.

62. I rely on *Director of Public Prosecutions v Cindy Clarke* [2019] Bda LR 46 where Kay JA stated at paragraph 30 that where a decision maker has a general interest in the outcome of a decision, they would only be disqualified in the event of a more pronounced personal interest in the outcome. Although members of the ExCo would have had a general interest in the good order of the Union, I am not satisfied that there is any evidence supporting that any ExCo member had a more pronounced personal interest in the outcome. *Clarke* also set out the principles at paragraph 35 – 39 on necessity, citing *Wade and Forsyth Administrative Law, 11th Edition* at pages 395 – 396 stating “*In most of the cases so far mentioned the disqualified adjudicator could be dispensed with or replaced by someone to whom the objection did not apply. But there are many cases when no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to necessity; for otherwise there is no means of deciding and the machinery of justice or administration will break down.*” Thus, in the present case, I accept that the ExCo had a non-delegable duty to consider matters of discipline and that bias and apparent bias played no part in such decision making.

Issue 3 – Application of the Unjustifiable Discipline Guidance

63. Dr. Santucci relies on the 2006 UK Department for Business Innovation & Skills Guidance on Unjustifiable Discipline by a Trade Union. I find no merit in relying on this document as it is not binding or a persuasive authority for this Court. Further, the issues in this case

are in relation to the Suspensions imposed on Dr. Santucci for sharing confidential Union business with the media rather than the factors set out in the Guidance in the section on assertions and unjustifiable discipline.

Issue 4 – Whether Dr. Santucci’s natural justice rights were infringed, in particular, whether the Union exercised its duty/duties owed to Dr. Santucci as explained in the Union Constitution and the Bermuda Constitution

The Law on Natural Justice Rights

64. Natural justice is not an inflexible principle. In *Dennis Robinson v The Parole Board* [2019] SC Bda 76 Subair Williams J cited with approval Ground J in *Shane Smith v The Minister of Health and Social Services and the Commissioner of Prisons* [1996] Civ No. 19 of 1996:

“41. The duty of the Parole Board to comply with the common law rules of natural justice is compendiously illustrated by reference to Lord Bingham’s 2011 Oxford University Press publication as cited by Kawaley J in *Cashman v The Parole Board*:

“Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred and not unreasonably. This rule recognizes, as did Magna Carter, that public power is held on trust, not as a privilege conferred on its possessor. So while we would readily accept that in a complex society such as ours power must necessarily be conferred on many ministers, officials, administrators and judges, we do not give any of them, ever, a blank cheque to draw on as they choose. The power is given for a purpose, which must be honoured.”

46. ... Ground J, in considering the applicable principles of natural justice, made the following observations at pages 4-6 of his decision:

“That is not the end of the matter, however, because it leaves the critical question of what the duty to act fairly entails in those circumstances. It is now well established that what amounts to fairness, or what the rules of Natural Justice require, is not an absolute, but varies according to the nature of the decision being made:

“The scope and extent of the principles of Natural Justice depend on the subject matter to which they are sought to be applied.” Per Brightman LJ in *Payne v Lord Harris of Greenwich* [1981] 1 WLR 754, citing *R v Gaming Board for Great Britain, ex parte Benaim and Khaide* [1970] 2 QB 417, 430.(”)

In some cases fairness may require a full evidential hearing, while in others it is enough that the decision maker brings a fair and open mind to the decision."

However, I do not think that fairness requires that the complaint or allegations against the prisoner be proved in any formal sense, nor do I think that an evidential hearing is required to establish them. This is because parole is a privilege and not a right, and until the completion of his original sentence a prisoner cannot claim the right to liberty of person guaranteed to others under the Constitution. Moreover, in order to retain an effective control over a prisoner the authorities need to be able to effect a speedy recall in cases of breach, without being unduly impeded, subject of course to the requirement that they do so in a fair manner. For the same reason I do not think that the decision maker is precluded from having regard to hearsay or other matters which would be excluded by the strict rules of evidence, provided he puts his mind to the dangers inherent in such a course. The best way that he ensures that he puts his mind to such dangers is for him to hear the prisoner's representations.

65. Subair Williams J went on to say:

58. While it has no universal application, the rules of natural justice, in my judgment, implicitly require that the Plaintiff be given the same entitlement to appear and to be heard in person, as given to a prisoner under section 12(5A). I agree with the general approach outlined by Ground J in the case of Shayne Smith and find that whether it be in respect of section 12 or 13 of the Prisons Act 1979, the following procedural steps are required by the common law principles of natural justice in avoidance of an infringement of the section 5 constitutional protection against arbitrary detention:

- 1. The prisoner is to be informed in writing of the allegations against him which give cause for a hearing on whether his license will be recalled. The allegations should be accompanied by a summary of the relevant information supportive of the allegations;*
- 2. The prisoner is to be informed as soon as is practicable of the date on which the hearing will be held and should be given sufficient opportunity to avail himself of the measures set out in this list;*
- 3. The prisoner is to be given an opportunity to submit written representations and relevant documentation to the Parole Board in advance of the hearing. Such representations and documentation may be on the subject of the recall or on any personal mitigating factors for the Board's consideration;*
- 4. The prisoner is to be given an opportunity to call witnesses in his support on matters relevant to the recall or to personal mitigation (Notwithstanding, a full evidentiary presentation by the Parole Board of the allegations against the prisoner is not required and the strict evidentiary rules that apply to a Court hearing need not apply to a hearing before the Board.)*
- 5. As soon as is practicable after the making of any final decision, a minute shall be made of the decision of the Board in compliance with item 7 of the First Schedule of the Parole Board Act 2001 and the prisoner must be provided with a copy of the minute of that decision without delay. (The minute of the decision*

should include a summary note of the hearing held and a statement of the reasons upon which the decision is based.)

66. In *Cheyra Bell v The Attorney General et al* [2021] SC (Bda) 43 Civ at pages 14 – 16, Hargun CJ stated:

“24. The submissions made on behalf of the Applicant assume that a Disciplinary Hearing before the HOPS under the PSC Regulations has to meet the exacting standards for hearing in a court of law. However, requirements of rules of natural justice and fairness are necessarily flexible and depend upon the particular circumstances of the case. The requirement to hold a “hearing” does not necessarily require an oral hearing with all the witnesses of the facts being tendered for cross examination. Further, the issue of “fairness” is determined in the context of the position taken by an applicant before the decision-maker. If an applicant elects not to raise a particular point before the decisionmaker, such as requesting to cross examine witnesses of fact, it would be rare for a court in judicial review proceedings to conclude that the absence of cross examination entailed a breach of the rules of natural justice or fairness.

25. The flexibility of the application of the rules of natural justice and fairness is reflected in the commentary in De Smith’s Judicial Review, Eighth Edition, at paragraphs 7-065 and 7-068:

“7-065 A fair “hearing” does not necessarily mean that there must be an opportunity to be heard orally: “one is entitled to an oral hearing where fairness requires that there should be such a hearing, but fairness does not require that there should be an oral hearing in every case” (R. (on the application of Ewing) v Department of Constitutional Affairs [2006] 2 All ER 993 at [27]). It has been observed that where an oral hearing is required, “[t]he interest at stake are such as to trump other factors in the balance such as cost and perhaps the efficiency” (H [2008] EWCA Civ (Admin)). Whether an oral hearing is necessary in any given case will depend on the facts of the particular case and it would be preferable to have an oral hearing where, for instance, on the evidence, there are facts which are in dispute, (although a dispute of fact alone will not automatically necessitate an oral hearing) or if there is doubt as to whether an oral hearing may be of assistance, the presumption should be in favor of it. In any case, if there is a failure to request an oral hearing, it may be fatal to a judicial review challenge on this ground (Re Solicitor [2008] EWCA Civ 411 at [27]).

7-068 An oral hearing will not necessarily be conducted as though it was a hearing in court. In some cases, it will merely involve the right to deliver oral representations, untrammelled by the rules of evidence or rights to produce or cross-examine witnesses.”

26. In Lloyd v McMahon [1987] AC 625 Lord Bridge expressed the view that “the so-called rules of natural justice are not engraved on tablets of stone to use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision

which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.”

67. In *Dymoke v Association for Dance Movement Psychotherapy UK Ltd* [2019] EWHC 94

Popplewell J stated as follows:

“56. So for example in Ridge v Baldwin [1964] AC 40, 132 Lord Hodson identified the three principle features of the requirement of natural justice as being the right to an unbiased decision maker, notice of the charges and a right to be heard in answer to those charges.”

Plaintiff's Submissions

68. Mr. Caines made a number of submissions in support of his contention that the ExCo breached the principles of natural justice and fairness in the manner it dealt with Dr. Santucci. He relied on a number of cases including *Dennis Robinson*. In essence, Mr. Caines submitted that, although the Union will insist that that the ERM held on 30 September 2021 was a proper hearing that adhered to the principles of natural justice and fairness, it was clear that it was not. He submitted that the powers of suspension pursuant to Article VIII (Discipline) meant:

- a. They must be exercised in good faith and not for any improper purpose;
- b. They must not be exercised capriciously, arbitrarily or irrationally;
- c. They must be exercised with regard to the rules of natural justice, including:
 - i. Giving notice of the gist of any allegations against a member;
 - ii. Giving the member a fair opportunity to respond to them;
 - iii. The right of an unbiased decision maker; and
 - iv. The rights to a brief explanation as to the reason for suspension.

69. Mr. Caines submitted in essence that Dr. Santucci has raised issues which caused significant concern to the ExCo including that the Union was not following the proper procedure in relation to the substantive content in the June Communique in respect of the Completed Work and ratification by the General Membership being the Supreme Authority. There was in-depth cross-examination of the decision making and ratification

procedures for which it is not necessary for me to resolve. Further, Mr. Caines submitted that Dr. Santucci caused further disquiet with the ExCo as he was pressing for an SGMM to no avail. As I understand it, the thrust of Mr. Caines' submissions was that the ExCo took the position to impose the Interim Suspension due to Dr. Santucci's expression of these and other related issues. To that point, I should state here that I understand the Union's position to be simply that Dr. Santucci was suspended because he breached the Union's principle of confidentiality by sharing Union business with the media.

Defendant's Submissions

70. Mr. Masters made a number of submissions that in essence, Dr. Santucci's natural justice rights were not infringed by the imposition of the Interim Suspension. He submitted that the ExCo followed the Union Constitution procedures for suspending a member, in this case, for sharing internal communication with the RG after being informed that Union business was private and confidential on two occasions (ERM on 30 September and the October Communique).

71. Mr. Masters submitted that likewise for the Final Suspension, Dr. Santucci was suspended in accordance with the procedures, namely that Dr. Santucci was informed in good time of the case against him and he had the opportunity to examine the evidence. At the SGMM, Dr. Santucci was afforded the opportunity to make representations in relation to the suspension after which, in accordance with Article VII(3), the membership voted and confirmed Dr. Santucci's suspension for 2 years.

Analysis

Malicious motivation

72. I am not satisfied that the Suspensions were imposed by the Union having denied Dr. Santucci his natural rights of justice for several reasons. As a starting point, I am not satisfied that the ExCo suspended Dr. Santucci on the basis of a malicious motivation. In *Hopkinson v Marquis of Exeter* (1897) LR 5 EQ 63 a club had the power to expel a member

based on a vote by two-thirds of the members. Lord Romilly, M.R. ascertained that in the proceedings “*there was a bona fide meeting, and one that was fairly called; that the question was fairly submitted to the meeting, and the decision adopted bona fide, and not through any caprice; and therefore, that the decision was final.*” In my view, I am satisfied of the evidence of the witnesses (Crenstant Williams, Laurel Burns, Mr. Wolffe, Ms. Bailey) that the Interim Suspension was based on the issue of Dr. Santucci sharing Union business with the media. On the contrary, I am not satisfied that there was some capricious reasons, in other words, some impulsive or unpredictable or unaccountable reasons. No witness adopted that position.

Interim Suspension

73. In relation to the Interim Suspension, upon review of the evidence, it is clear that the chronology of events and documents set out that Dr. Santucci was on notice and was cautioned about the confidentiality of Union business. The June Communique was marked at the top of page 1 in bold large font “Members’ Communique – For Internal Dissemination Only”. I accept that the ERM was called as a result of the Union being contacted by the RG and informed of its communication with Dr. Santucci. I have reviewed the ERM Transcript carefully. At the ERM the Union reminded its members who were present that the Union was sharing information with them “in all confidentiality” and that the Executive and the school representatives should keep the information confidential, although as school representatives they were entitled to receive the important information³.

Attack and Ambush

74. At this point, it will be useful to deal with Dr. Santucci’s assertion that he was attacked and suffered the first of two ambushes at the ERM by the members who were on the ERM call. I have reviewed the ERM Transcript and I am not satisfied that he was attacked or ambushed as he describes it. At 30 minutes into the meeting, Brother Tankard raised the issue that someone in leadership had spoken to the media, he thought it was appropriate to receive an explanation from that person, and he expressed that such conduct “breaks the

³ ERM Transcript page 1

bonds of trust and confidentiality”⁴. The President then invited Dr. Santucci to speak if he so desired. Dr. Santucci commented that Brother Tankard’s question was a “very good question” and he was happy to respond to it. In my mind, Dr. Santucci instead sought to avoid answering the question as to why he had spoken to the media (saying that dealing with the media was a “non-issue”), instead directing members to the issues of his complaint about the Completed Works. However, Brother Tankard pressed him for the reasons why he had spoken to the media⁵. On that same page, President Bailey raised a few points of order with Dr. Santucci which in my view she was entitled to do as the President had conduct of the ERM.

75. At 49 minutes into the meeting, Brother Painter (sic) (I shall use “Paynter”) took up the issue again of why Dr. Santucci had spoken to the media, noting that in his view Brother Tankard’s question was never answered by Dr. Santucci⁶. At 51 minutes into the meeting, Dr. Santucci explained that he felt it was his right to share Union information with the media⁷. At 64 minutes into the meeting, Sister Tucker expressed her views about speaking to the media, expressing that she wanted to be able to trust Dr. Santucci that “what happens in our house can stay in our house” and asked Dr. Santucci to explain his intent. Dr. Santucci replied to sister Stucker that he “was happy to respond”.

76. In light of these extracts in the Transcript, it seems absolutely clear to me that members were concerned that Dr. Santucci had spoken to the media and they wanted an explanation. Dr. Santucci stated that he was happy to provide an explanation and after some deflection, he did so. Thus, I reject the contentions by Dr. Santucci that he was attacked or ambushed.

77. Returning to the Interim Suspension, the October Communique was issued with the words again in bold large font “Members Communique – For Internal Dissemination Only”. It spoke of confidentiality and members using established protocols to address concerns –

⁴ ERM Transcript page 9

⁵ ERM Transcript page 10

⁶ ERM Transcript page 15

⁷ ERM Transcript page 16

none of which involved informing the media. On 7 October the RG informed the Union that it had spoken with Dr. Santucci again.

78. I have already found that Dr. Santucci had breached the confidence of the Union. In light of the chronology of events as set out above specifically prior to the Interim Suspension, in my view, the ExCo properly exercised its authority under Article VIII(3) to impose the Interim Suspension when it did. I accept that the ExCo has the authority to suspend any member because the Article expressly says so. Further, the Suspension Reasons were provided to Dr. Santucci. In my view, those reasons demonstrate the situation that was facing the ExCo – in essence that when it issued information, it was being shared by Dr. Santucci to the media. This was in the context of the Union trying to set a meeting date for the SGMM in the time period of the Covid-19 pandemic and the Government restrictions. I rely on *Dennis Robinson* that natural justice is not an inflexible principle. In my view the Union acted fairly when it held the ERM and invited Dr. Santucci to provide an explanation as to why he shared Union business with the media. They also acted fairly at the ERM by reminding members about confidentiality and how to address matters within the Union.

79. In my view, the ExCo acted fairly when at a later time they met and decided that they should suspend Dr. Santucci. I rely on *Cheyra Bell* where it referred to De Smith’s Judicial Review stating that “fairness does not require that there should be an oral hearing in every case”. Thus, I rely on *Lloyd v McMahon* where Lord Bridge stated that “*the so called rules of natural justice are not engraved on tablets of stone*”. In my view, it was vividly clear that faced with the circumstances leading up to the Interim Suspension, the ExCo acted fairly to impose the Interim Suspension on Dr. Santucci. Thus, I reject Dr. Santucci’s assertion that he was ambushed a second time when an ExCo Meeting was held and he was not present at it nor did he know of the details of the ExCo meeting and the vote to suspend him. I should add here that Minutes should have been taken of the ExCo Meeting when the decision to suspend was reached, but in my view, the failure to do so does not undermine the ultimate decision to suspend Dr. Santucci. It was compelling that the ExCo imposed the Interim Suspension based on Article VIII of the Union Constitution that it had to be ratified in a General Membership Meeting.

Final Suspension

80. In relation to the Final Suspension, in my view, the proceedings were in accordance with the rules of natural justice. Dr. Santucci was informed in the letter of suspension of the Suspension Reasons, he was referred to Article VIII and the right to attend the next General Membership meeting where he would be allowed to speak. The meeting was held within 3 weeks of the Interim Suspension. I have reviewed the SSGM Minutes and the SSGM Transcript carefully. I accept that Dr. Santucci attended the SGMM and he was given the opportunity to speak after which the vote was taken by the General Membership, the Supreme Authority, to confirm the Suspension for a period of 2 years⁸. Thus, I find that these circumstances were consistent with the principles set out in the cases including *Dymoke* where it stated that fairness calls for an unbiased decision maker, notice of the charges and a right to be heard in answer to those charges. Further, several witnesses stated that they were aware that they could have made a motion but did not do so.

81. I have considered the argument put forward by Dr. Santucci that the motion that was put by a member in respect of the vote was not in accordance with Article VI(6)(e) which requires a motion to be submitted to the ExCo two weeks or 10 working days before the date of the meeting. I find no merit in this argument because Article VIII(3) sets out that any suspension of a member must be endorsed at the next General Meeting. In my view, there was no need to have a motion submitted in advance because the Constitution required the suspension to be addressed. Further, and in any event, the motion was in respect of taking the vote, not having the item on the agenda.

82. In light of the reasons set out above, I am not satisfied that the Suspensions were imposed on Dr. Santucci in breach of the rules of natural justice.

⁸ SSGM Transcript page 28.

Issue 5 – Ineligibility for candidacy in the Election

83. In my view, having made the findings on the Suspensions above, I am satisfied on the evidence of Ms. Bailey that Dr. Santucci was ineligible to be a candidate for election to office, pursuant to Article VI(8), whilst under suspension.

84. Thus, it is important to add here that I have made findings above that I was not satisfied that bias had played a part in the Union's decision to suspend Dr. Santucci. That finding is applicable here in this issue about his candidacy as I take the view that I am not satisfied that bias played any part in the ineligibility of candidacy for election to office.

Issue 6 – Reversal of the Election Results

85. In light of the reasons stated above there is no basis for a declaration that the 2021 and 2023 elections be declared null and void.

86. If I were wrong in respect of the breach of the rules of natural justice in respect of the Suspensions, I would not exercise my discretion to grant a declaration that the elections of 2021 and 2023 be declared null and void. In *Taalib-Din v Provost Marshal* [2018] Bda LR 92 at paragraph 12, Hargun CJ endorsed the findings of Neuberger J in *Financial Services Authority v Rourke* [2001] EWHC 704 where it stated “... *When considering whether to grant a declaration or not, the court should take into account justice to the claimant, Justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration*”.

87. In my view, justice to Dr. Santucci at this point would be achieved if he was successful on his claims that he should not have been suspended. However, to grant a declaration now in respect of a 2021 election when the term of office was for 2 years and would have been finished in 2023 would serve no useful purpose. In respect of the election in 2023, that term of office of 2 years is near completion and any declaration would serve no useful purpose. In any event, the Court has not been provided with the mechanics of the election procedure

in order to determine whether the whole or part of the elections should be declared null and void.

88. Dr. Santucci also seeks a declaration that the election be declared null and void as the Union's actions towards Dr. Santucci are akin or like acts described in section 32 of the 2021 TULRA. Further, Dr. Santucci seeks a declaration that Union's action were *ultra vires* section 32 of the 2021 TULRA.

89. Section 32 of the 2021 TULRA states as follows:

“Persons barred from holding office

“(1) No person who has been convicted of any offence involving fraud or dishonesty or who is an undischarged bankrupt shall within five years of the date of such conviction or until he is discharged, as the case may be, be an officer or a person employed in administering or collecting funds of a trade union.

“(2) Where an officer or a person employed in administering or collecting funds of a trade union is so convicted or is an undischarged bankrupt, he shall immediately vacate his office or cease to be employed, as the case may be.

90. In my view, there is no evidence to support any request for relief on this ground pursuant to section 32. The application for a declaration fails in respect of the election being null and void and that the Union's action were *ultra vires* section 32.

Issue 7 – Defamation for the use of the phrase “Treasonous”

Plaintiff's Submissions

91. Mr. Caines submitted that Dr. Santucci had demonstrated that the Union (moreover the ExCo) has in a very calculated manner, maliciously, malevolently and deliberately set out to tarnish Dr. Santucci's name. Further, that through their unwarranted and wrongly advanced label of “treasonous”, they have damaged Dr. Santucci's name in the eyes of the membership and beyond. He submitted that although Dr. Santucci had not specifically pleaded defamation, there is a clear undercurrent of the elements of defamation in the factual matrix. Mr. Caines submitted that labelling the Plaintiff as treasonous was a *de facto* defamatory statement which was untrue as the Plaintiff did no such treasonous actions,

though he did ask pointed questions that appeared to be against Union constitutional principles and were within his right to do so. He submitted that right thinking people would have understood his actions but they were provided with a deliberately skewed perspective causing the Plaintiff to be lowered in the estimation of right thinking members of society. He continued that the defamatory statement exposed Dr. Santucci to ridicule and contempt, that he was vilified by the use of the term thereby disparaging him in his profession and that the October Communique was published for all 900 members of the Union to read and digest, without the benefit of the full context of the situation.

Defendant's Submissions

92. Mr. Masters submitted that there has been no cause of action for libel averred or made out in the pleadings to sustain a claim for reputational damage and that the claim is not properly pleaded in compliance with Order 82 of the Rules of the Supreme Court. Further, there have been no particulars of the defamation claim, no quantum of damages and Dr. Santucci gave no evidence of loss or damages, reputational or otherwise. Thus, there is no evidence upon which the Court could properly consider the question of defamation. He submitted that if the Court wished to consider the issue of defamation in earnest, then Dr. Santucci should be ordered to plead properly his case pursuant to the rules and then the issue of defamation can be considered on the evidence, noting that such a course of action would be unusual and not in keeping with the overriding objective.

93. In any event, Mr. Masters submitted that no defamation had occurred because the claim that Dr. Santucci's decision to share Union business was "... nothing short of treasonous" was commentary on Dr. Santucci's conduct and the effect it had on the Union's ability to trust that Union business would stay within the membership when requested. He submitted that no right thinking person would conclude that the characterization of Dr. Santucci's conduct was meant to allege that he was guilty of treason in the criminal sense, rather that his conduct to share Union business with the media was a betrayal of trust. Mr. Masters submitted that the claim did not reach the threshold of seriousness and the claim that Dr. Santucci had been libelled was plainly trivial.

Analysis

94. In my view, the Court is unable to grant any damages or relief for defamation as defamation was not pleaded by Dr. Santucci. Mr. Caines conceded that Dr. Santucci did not “specifically plead defamation” but the Rules of the Supreme Court 1985 Order 82 sets out the rules for pleading defamation and the obligations of both a plaintiff and a defendant in such cases. Without such a case being properly pleaded or pleaded at all, the Court is not in a position to consider the granting of any such award and thus declines to do so.
95. In any event, on the evidence, it appears to me that the comment and the content of the October Communique was an opinion on the conduct of Dr. Santucci, the actions by a Royal Gazette reporter to contact the Union and the RG for printing an article about Union business on its front page. I do note that although Mr. Caines submitted that the description “treasonous” had damaged Dr. Santucci in the eyes of the membership and beyond, I should point out that it was Dr. Santucci who shared the October Communique with the media who in turned printed the story in a Royal Gazette article. It seems to me that the dissemination beyond the Union membership lays at the hands of Dr. Santucci himself.
96. I should address here the assertion by Dr. Santucci that he was described as “treasonous” in order to affect his candidacy in the election. First, in the evidence of the 8 witnesses who provided a witness statement upon a *sub poena*, 3 witnesses (Vejay Steede, Carlton Johnson and Jonathan Tankard) were of the view that Dr. Santucci conduct was treasonous – but only one of those three (Veejay Steede) voted for Dr. Santucci to be suspended. There is no evidence of whether the other voters took into account the description of “treasonous”. Second, in my assessment of the evidence, I am not satisfied that the term “treasonous” was used in the October Communique for the purpose of maligning the character of Dr. Santucci in order to affect his chances in the election. As stated above, it appeared to be the expression of the opinion of the Union on the conduct of Dr. Santucci.
97. I decline to give any directions about pleading the claim for defamation as the overriding objective has as its purpose saving expense, ensuring the case is dealt with expeditiously

and dealing with as many aspects of the case as it can on the same occasion, that is, at the trial of all the relevant matters. In my view, all the issues in these proceedings should have been properly pleaded and dealt with in these proceedings.

Issue 8 – Audited Accounts

98. Relevant parts of Section 21 of the 2021 TULRA to this issue provide as follows

Section 21 - Annual returns to be transmitted to Registrar

(1) A general audited statement of the receipts, funds, effects and expenditure of every trade union registered under this Act shall be submitted to the Registrar on or before the 31 May in every year.

Plaintiff's Case

99. Dr. Santucci's Statement of Claim set out that the Meeting Request letter raised the issue of the audited accounts for the years 2017 – 2020 and the duty of the officers to render accounts. Dr. Santucci's evidence as set out above is that there was a serious failing of the Union in respect of outstanding audits pursuant to Articles IV(3), Article VI(9)(d) and Article IX to file its audited statements.

100. Dr. Santucci seeks a declaration that the Union's actions were *ultra vires* under section 21 of the 2021 TULRA.

Defendant's Submissions

101. Mr. Masters submitted that Mr. Wolffe gave evidence about the filing of accounts with the General Membership and the Registrar as set out in the summary of Mr. Wolffe's evidence above. I accept Mr. Wolffe's evidence that such accounts, unaudited and audited have been filed as he stated during the period 2017 – 2020. Significantly he stated that the audited financial statements for 2017, 2018, 2019 and 2020 were filed with the Registrar in accordance with the 2021 TULRA, and the Registrar has taken no criminal proceedings against the Union pursuant to section 21(6).

Analysis

102. As stated above, I accept Mr. Wolffe's evidence about the filing of audited financial statements with the Registrar. Thus, I am not satisfied that Dr. Santucci has shown that the requirements of section 21 and section 29 of the 2021 TULRA have not been met and the application for a declaration fails.

Issue 9 – Amendment of the Union Constitution

103. Relevant parts of Section 20 and Section 21 of the 2021 TULRA to this issue provide as follows:

Section 20(1)(b)- Constitution of registered trade unions

(1) The following provisions shall have effect with respect to the constitution of a trade union registered under this Act—

- (a) the constitution shall contain provisions in respect of the matters mentioned in subsection (2);*
- (b) every amendment or alteration of the constitution shall be submitted to the Registrar for registration, and no such amendment or alteration shall have effect until the Registrar has issued a certificate of registration with respect to such amendment or alteration; and*
- (c) ...*

Section 21 - Annual returns to be transmitted to Registrar

(1) A general audited statement of the receipts, funds, effects and expenditure of every trade union registered under this Act shall be submitted to the Registrar on or before the 31 May in every year.

(5) Every trade union shall send to the Registrar, within three months of the date to which the books of the trade union are made up in every year—

- (a) a copy of all alterations to the constitution and changes of officers made by the trade union during the year preceding such date; and*
- (b) a copy of the constitution of the trade union as it exists at that date.*

...

Plaintiff's case

104. Dr. Santucci seeks a declaration that the Union's actions were *ultra vires* under section 20(1)(b) of the 2021 TULRA.

Defendant's Submissions

105. Mr. Masters submitted that the Union Constitution had not been amended or altered thus section 20(1)(b) of the 2021 TULRA did not come into effect. He argued that the ExCo voiced their desire to modernize the Union Constitution, but no such modernisation had taken place. Further, if changes to the Union Constitution were decided, the decision would be required to go to the BGC for approval.

Analysis

106. I have reviewed the evidence carefully. I have not seen evidence that the Union had amended its Constitution. Ms. Bailey did speak about modernisation including bringing financial statements up to standard, regularizing committees and enhancing the executive arm. The June Communique stated that the Union wanted to highlight the progress it had made in the area of Union reform, succession planning, representation and Union staffing. It went on to provide details about policies procedures and practices. The evidence does not show that there were amendments to the Constitution.
107. I am not satisfied that Dr. Santucci has shown that the section 20(1)(b) and section 21(5) of the 2021 TULRA were engaged and subsequently breached. Thus the application for a declaration fails.

Issue 10 – Ancillary Issues – Failure to fulfill legal duty of fair representation and request for an account of profits

108. Dr. Santucci claims for a breach of duty to provide fair representation. In my view, there has been no evidence on this issue - neither has there been submission on the point. I

agree with Mr. Masters that Dr. Santucci is not entitled to be represented by the Union in the context of internal disciplinary proceedings. I reject the application for damages against the Union for a failure to fulfill a legal duty of fair representation.

109. Dr. Santucci claims for an account of profits against the Union. An account of profits is an equitable remedy used to require one party to surrender the profits made, where that person has profited from a wrong at the expense of another. There has been no pleadings, no evidence and no submissions on this point. In my view the remedy of an account of profit does not rise in this matter. Thus, I reject the application for an account of profits against the Union.

110. Dr. Santucci brings this action under the Bermuda Constitution, the 2021 TULRA and the Good Governance Act 2012. It appears that he claims to be qualified for protection pursuant to section 3 of the Good Governance Act 2012. The Royal Gazette described Dr. Santucci as a “whistle-blower”. The Union denied this assertion.

111. The Good Governance Act 2012 (the “**2012 Act**”) states as follows:

Section 3 - Offence of terminating contract with, or withholding payment from, a whistle-blower

(1) A person commits an offence—

- (a) if he terminates a contract with another person because that person or any of his officers or employees has made a protected disclosure; or*
- (b) if he withholds any payment due under a contract to another person because that person or any of his officers or employees has made a protected disclosure.*

(2) For the purposes of this section, a person makes a protected disclosure if, in good faith, he notifies whichever of the listed persons appears to him to be the most appropriate person to notify in the circumstances, that he has reasonable grounds to believe—

- (a) that another person has committed, is committing, or is about to commit, a criminal offence or breach of any statutory obligation related to that person’s business; or*
- (b) that information tending to show any matter falling within paragraph (a) has been, is being, or is likely to be, altered, erased, destroyed or concealed by any person.*

(3) For the purposes of subsection (2), the “listed persons” are—

- (a) the person’s employer, manager or supervisor;*

...

- (q) the Manager of Labour Relations or an inspector (designated under section 34 of the Employment Act 2000).*

112. There was no evidence led or submissions made on this point. Thus, I am unable to assess the relevance of the 2012 Act or whistleblowing to these proceedings.

Conclusion

113. In general, I have dismissed the claims of Dr. Santucci and declined to make the declarations as sought, finding that:
- a. Issue 1 - Dr. Santucci breached the confidence of the Union.
 - b. Issue 2 – The ExCo was not guilty of bias or apparent bias.
 - c. Issue 3 – There was no merit in relying on the 2006 UK Department for Business Innovation & Skills Guidance on Unjustifiable Discipline by a Trade Union.
 - d. Issue 4 – The ExCo had not infringed on the natural rights of justice and that the ExCo did not have a malicious motivation, thus the ExCo had not acted improperly to impose the Suspensions.
 - e. Issue 5 – Dr. Santucci was ineligible for election to office whilst suspended.
 - f. Issue 6 – There was no basis to declare the elections in 2021 and 2023 to be null and void.
 - g. Issue 7 – Defamation was not pleaded. In my view it was an opinion of the Union. I declined to give directions for defamation to be pleaded and another hearing undertaken to determine the issue of defamation.
 - h. Issue 8 – I was not satisfied that the Union had failed to file audited statements for the period 2017 – 2020.
 - i. Issue 9 - I was not satisfied that the Union had made amendments to the Union Constitution and thus was in breach of sections 20 and 21 of the 2021 TULRA.
 - j. Issue 10 – Dr. Santucci was not entitled to be represented by the Union in the context of internal disciplinary proceedings. I rejected the application for an account of profits.
114. In light of the reasons set out above, I have dismissed the applications for the relief sought and the claims for damages.

115. Unless either party files a Form 31TC within 7 days of the date of this Judgment to be heard on the subject of costs, I direct that costs shall follow the event in favour of the Union against Dr. Santucci on a standard basis to be taxed by the Registrar if not agreed.

Postscript

116. *This Judgment is being delivered well beyond the normal timeframe expected for the issuance of judgments and rulings and my own personal timeframe for doing so. I extend my apologies to the parties and counsel and thank them for their patience. The reason for the delay is that I have had to turn my attention to a range of other judicial administration duties including recruitment and appointment of other judicial officers, other personnel issues, the Probate Division, the Judicial Complaints Protocol, procurement of an electronic case management system, dealing with the loss of Court 1 in Sessions House and therefore relocating the Supreme Court and Court of Appeal into new premises in Dame Lois Browne Evans Building, meeting with court users groups and planning for and participation in the 8th Biennial Conference of the Caribbean Association of Judicial officers which Bermuda hosted in November 2024.*

Dated 14 April 2025



HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE